

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

EQUAL EMPLOYMENT OPPORTUNITY	)	
COMMISSION,	)	
	)	
Plaintiff,	)	
	)	Civil Action No.
v.	)	01-CV-7042
	)	
ALLSTATE INSURANCE COMPANY,	)	Consolidated With:
	)	Civil action No.
Defendant.	)	01-CV-3894
	)	

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**PLAINTIFF EQUAL EMPLOYMENT OPPORTUNITY COMMISSION'S  
MEMORANDUM IN SUPPORT OF CLASS CERTIFICATION**

This case is tailor-made for resolution by a class action under Rule 23, Fed.R.Civ.P., and as a collective action under the Age Discrimination in Employment Act, 29 U.S.C. §621 et seq. (“ADEA”). It arises out of a single plan by Allstate, its “Preparing For The Future” Group Reorganization Program, also known as the Mass Termination Program (hereinafter “Program”). The Program was applied to all of Allstate’s agents who worked as employees under an R-830 or R-1500 employment contract. Thus the same facts and the same legal issues face virtually all of Allstate’s former employee-agents. The Romero Plaintiffs and the Defendants have exhaustively briefed the issues. The Commission urges the Court to grant the Romero Plaintiffs’ motion because they have presented an overwhelming case for class certification under Rule 23 and for a collective action under the ADEA.

Defendants argue that a class action is inappropriate because the putative class members signed a release and that the enforceability of the release depends on facts unique to each individual. The defendants’ argument ignores reality. This was not a situation where 6200

individuals sat down with Allstate in 6200 separate circumstances and negotiated 6200 different releases.<sup>1</sup> If such was the case, then Defendants' argument would have merit, but the opposite is true. Allstate presented to all of its 6200 employee-agents identical releases with a take-it-or-leave-it ultimatum: sign the release or leave Allstate. As the Romero Plaintiffs point out, courts readily certify classes when plaintiffs attack the validity of a release on grounds applicable to all signers. (Plaintiff's Supp. Memo at 39-40.)

The Commission has found that Allstate's requirement that its employee-agents must sign the release or leave Allstate constituted unlawful retaliation under the ADEA, Title VII, and the ADA. It has brought its lawsuit challenging Allstate's scheme. Similarly, the Romero Plaintiffs have also alleged in Count I of their Amended Complaint that the release is illegally retaliatory. They have also alleged other legal challenges to the validity of the release that are uniform for all 6200 employee-agents. (See Plaintiff's Supp. Memo at 25.) It is clear that the validity of the release will be determined on a universal basis applicable to all 6200 employee-agents and the EEOC. Accordingly, the release issue, rather than posing an obstacle to class certification, actually provides a compelling reason for class certification.

In arguing against a collective action under the ADEA, Defendants assert that all but one of the Romero Plaintiffs' age discrimination charges are untimely with the sole exception being the charge of Gene Romero. Although Defendants paraphrase Romero's charge as alleging "that he believed Allstate's requirement that *all insurance agents* become independent contractors or take a severance package would have a 'disparate impact' *on older employees*" (emphasis added)

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<sup>1</sup>The Romero Plaintiffs state in their complaint and earlier briefs that 6400 employee-agents were terminated as part of Allstate's Program. Subsequent discovery indicates that the actual number is approximately 6200. (See Plaintiff's Supp. Memo at p.1, n.1)

(Defendants' brief at 48-49), Defendants contend that this allegation failed to give them notice of class wide age discrimination and thus they urge the Court not to allow a collective ADEA action.

Defendants concede that Gene Romero filed a timely ADEA charge which challenged its Program as discriminatory under the ADEA by having a disparate impact on *older employees*. (Defendants' brief at 49.) Romero's charge specifically states that "*all insurance agents*" (emphasis added) must become independent contractors or leave the company. Defendants cannot seriously claim that these allegations are limited to only Mr. Romero and failed to give Allstate notice of allegations of class-wide discrimination. Defendants' assertion to the contrary is illogical.

Apparently, Defendants' complaint is that Romero used the term "disparate impact" when he should have used the term "intentional discrimination." Given that the disparate impact theory of discrimination is by definition class-wide discrimination, Defendants' contention that it had no notice that Romero was asserting class-wide complaint is groundless, even if it were not obvious from the plain language of Romero's charge that he was asserting class-wide claims. It is also immaterial which theory of age discrimination Romero identified, disparate impact or intentional discrimination. Either allegation put Allstate on notice that it was accused of class-wide age discrimination. Moreover, it is well settled that charges of discrimination are to be liberally interpreted because persons filing charges lack legal training. Hicks v. ABT Associates, Inc., 572 F.2d 960, 965 (3rd Cir. 1978); see, e.g., Martinez v. Quality Value Convenience Inc., 1998 WL 967377(E.D. Pa.). Thus Romero's charge can be construed to allege class-wide intentional discrimination.

In addition, the purpose of a charge is only to initiate an investigation by the EEOC, not to state sufficient facts to state a claim under a particular legal theory. Vaught v. R.R. Donnelley and Sons, 745 F.2d 407 (7th Cir. 1984). Defendants do not dispute that the Commission's investigation of Romero's charge actually addressed his claim that Allstate's Program was motivated by intentional age discrimination and was a scheme to terminate its older agents. It is well settled that the scope of employment discrimination lawsuits is determined by "whether the acts alleged in the subsequent Title VII suit are fairly within the scope of the prior EEOC complaint *or the investigation arising therefrom*" (emphasis added), Walters v. Parson, 729 F.2d 233, 237 (3rd Cir. 1984); see also Ostapowicz v. Johnson Bronze Co., 541 F.2d 394, 398-99 (3rd Cir. 1976) (noting that "[c]ourts have generally determined that the parameters of the civil action in the district court are defined by the scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination"); EEOC v. Equicredit Corp. of America, 2002 WL 31371968 (E.D. Pa. Oct. 8, 2002) (subsequent lawsuit is not confined to the original charge, but is limited only to the "investigation reasonably expected to grow out of the initial charge of discrimination,"). Certainly, the Commission's investigation of systemic age discrimination based upon Romero's charge was reasonable. Thus Romero's charge adequately provides the basis for the ADEA collective action now sought by him and the other individual plaintiffs.

Allstate is again incorrect when it claims that the other Romero Plaintiffs did not file timely charges alleging age discrimination. Fourteen of the other Romero Plaintiffs filed timely

charges alleging retaliation on their face. (See Defendants' Ex. 11.)<sup>2</sup> All but one of the fourteen indicated on their EEOC questionnaire that they also believed they were victims of age discrimination by checking the age discrimination box, providing a written narrative describing class-wide age discrimination or both<sup>3</sup>. (See Def. Ex. 158, 160, 162, 163, 166, 167, 168, 171, 175, 176, 180, 183, and 184.) Indeed, many of the intake questionnaires which were submitted to the Commission by the plaintiffs to initiate their charges went into great detail describing why they believed that Allstate's Program was motivated by class-wide age discrimination and Allstate's desire to get rid of its older agents. (See e.g., Def. Ex. 162, 167, 171, 183. ) Obviously, as explained above, the EEOC could investigate this allegation of age discrimination as reasonably growing out of their charges of discrimination.. See Waiters, supra; Ostapowicz, supra; and Equicredit Corp. of America, supra. In fact, the EEOC did so. The EEOC investigated Allstate's Program initially because of Mr. Romero's charge filed in March 2000. But the EEOC also investigated Allstate's Program in response to each subsequent charge it received. The EEOC did not conduct separate investigations for each charge, but rather conducted one investigation of Allstate's Program, originally based upon Romero's charge, but ultimately based on all of the hundreds of charges received against Allstate. The investigation was divided into two parts, the retaliation issue and the age discrimination issue.<sup>4</sup> (See Schuetz

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<sup>2</sup>Defendants note that 14 of the Romero Plaintiffs filed retaliation charges more than 180 days but less than 300 days after the announcement of its Program. (Def. Ex. 11.) Each of these individuals' home state, has a statute that prohibits age discrimination in employment. The ADEA provides for a 300 day charge filing period in these circumstances, 29 U.S.C. §626(d)(2).

<sup>3</sup>The lone exception was Larry Lankford. (Def. Ex. 169.)

<sup>4</sup>The EEOC investigated the retaliation issue first. This aspect of the investigation was primarily conducted by EEOC investigator Lawrence Warren. EEOC District Director Richard

Decl. attached as Exhibit 1.) Thus, each of the retaliation charges of at least thirteen of the other Romero Plaintiffs is sufficient to support a collective ADEA action alleging age discrimination.

In respect to these thirteen Romero plaintiffs, there is yet another reason why Defendants' contention is wrong that they failed to file timely age discrimination charges. Age discrimination allegations were not reflected on the face of the retaliation charges because of the EEOC, not these thirteen Romero Plaintiffs.<sup>5</sup> This Court has held in Martinez v. Quality Value Convenience, Inc., supra, that an intake questionnaire should be considered in determining the proper scope of an EEOC investigation and thus in determining the scope of the resulting lawsuit. In Martinez the plaintiff's charge alleged on its face only age discrimination, but his intake questionnaire also indicated he was claiming race discrimination and national origin discrimination. This Court refused to grant summary judgment on the race and national origin discrimination claims because they did not appear on the face of the charge. The Court explained:

The Third Circuit has not addressed the specific question whether a ground for discrimination mentioned in an intake questionnaire but omitted from a charge of discrimination prepared by the EEOC should be considered exhausted for the purposes of a later suit. However, the Third Circuit has indicated reluctance to allow the actual scope of the EEOC's investigation to prevent a plaintiff from

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Schuetz investigated the age discrimination issue. The EEOC completed its investigation of the retaliation issue first, and issued its first determinations in September 2000, finding a violation of the antiretaliation provisions of the ADEA, Title VII, and the ADA. The commission determined to close its investigation of the age discrimination issue in the summer of 2002 and issued notices of right to sue on this issue in August 2002. (See Schuetz Decl. attached as Exhibit 1.)

<sup>5</sup>When the EEOC became aware that many people who had filed retaliation charges believed that their charges also included age discrimination claims, the Commission, in an abundance of caution, wrote all charge filers advising them to file an additional charge that specifically alleged age discrimination.


bringing a claim in court where there was some indication that the plaintiff intended the EEOC to investigate that claim.

Id. at 2. Here thirteen of the other Romero plaintiffs clearly indicated in their EEOC intake questionnaire that the scope of their timely charges included age discrimination in addition to retaliation. There can thus be no doubt that these thirteen Romero Plaintiffs filed a timely charge on which the collective ADEA action can now be based.

**Conclusion**

This case is uniquely suited to a class action under Rule 23 Fed.R.Civ. P. and a collective action under the ADEA. The issues of the Romero lawsuit all arose from a single act of Allstate that effected all 6200 of its former employee-agents. Finally, the Romero Plaintiffs have met the charge filing requirements necessary to bring a collective ADEA action.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that on March 11, 2003, I caused a copy of the foregoing Plaintiff EEOC's Memorandum in Support of Class Certification to be served upon the following persons by first class United States Mail, postage prepaid:

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GENE R. ROMERO, *et al.* )  
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EQUAL EMPLOYMENT OPPORTUNITY )  
 COMMISSION, )  
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 V. ) CIVIL ACTION  
 ) No. 01-7042  
 )  
 ALLSTATE INSURANCE COMPANY, )  
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**DECLARATION OF RICHARD W. SCHUETZ**

I, Richard W. Schuetz, declare under the penalty of perjury pursuant to 28 U.S.C. §1746, that I am over the age of twenty-one (21) years of age, I am a resident of the State of Illinois, and that I have personal knowledge of the matters contained herein unless otherwise stated.

1. I have been employed by the United States Equal Employment Opportunity Commission ("EEOC") in various capacities since March 1969.

2. I am currently the Deputy District Director of the EEOC's St. Louis District Office. I have held this position for approximately eleven years.

3. The EEOC's records show that the EEOC was first contacted in February 2000 by Gene Romero about the lawfulness of

Allstate's "Preparing For The Future" Group Reorganization Program. Mr. Romero indicated that he believed Allstate's Program was motivated by age discrimination and was also retaliatory.

4. The EEOC's records show that since March 2000, the EEOC has received about 700 charges which alleged that Allstate through its "Preparing For The Future" Group Reorganization Program (hereinafter "Program"), engaged in illegal age discrimination under the Age Discrimination in Employment Act of 1967 ("ADEA"), or engaged in unlawful retaliation under Title VII of the Civil Rights Act of 1964, the ADEA and the Americans With Disabilities Act, or both. About 300 of these charges alleged illegal age discrimination as an issue.

5. It is the usual practice of the EEOC to draft a charge of discrimination based upon the information contained in the charging party's EEOC questionnaire. I believe that practice was followed in respect to the charges concerning Allstate's program, although uniform language was used for most charges that alleged retaliation and likewise for most charges that alleged age discrimination.

6. The EEOC did not conduct a separate investigation for each charge it received concerning Allstate's Program, but rather conducted one investigation based originally upon Mr. Romero's charge that included subsequent charges that were


received concerning Allstate's Program.

7. Lawrence Warren was the EEOC investigator who primarily investigated the retaliation issue of the charges concerning Allstate's Program. A determination was first issued concerning charges raising this issue on September 19, 2000. Subsequent determinations were periodically issued for charges raising that issue which were filed with the EEOC after September 19, 2000.

8. I investigated the age discrimination issue of the charges concerning Allstate's Program. The Commission's investigation of the age discrimination ended in August 2002 without a finding and notices of right to sue were sent at that time to individuals who raised the age discrimination issue in a charge.

I swear under the penalty of perjury pursuant to 28 U.S.C. §1746 that the foregoing is true and accurate to the best of my knowledge and belief.

DATED this 11th day of March, 2003.

  
RICHARD W. SCHUETZ