

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


GENE R. ROMERO, et al.	:	CIVIL ACTION
v.	:	
ALLSTATE INSURANCE CO., et al.	:	NO. 01-3894

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION	:	CIVIL ACTION
v.	:	
ALLSTATE INSURANCE COMPANY	:	NO. 01-7042

ORDER

AND NOW, this ^{28th} day of February 2002, IT IS ORDERED:

1. Allstate's Motions to Dismiss are DENIED, without prejudice to a properly supported motion for summary judgment if appropriate.
2. The motion of the defendant Edward M. Liddy to dismiss for lack of personal jurisdiction is DENIED, without prejudice.


John P. Fullam, Sr. J.

ENTERED
MAR - 1 2002
CLERK OF COURT

JF

(48)

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GENE R. ROMERO, et al.

CIVIL ACTION

v.

ALLSTATE INSURANCE CO., et al.

NO. 01-3894-File

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

FILED

CIVIL ACTION

v.

FEB 28 2002

ALLSTATE INSURANCE COMPANY

MICHAEL E. KUNZ, Clerk

NO. 01-7042 X

by

Dep. Clerk

MEMORANDUM AND ORDER

Fullam, Sr. J.

February 28, 2002

The defendants in these consolidated cases have filed motions to dismiss the complaints and/or amended complaints, under Fed.R.Civ.P. 12(b)(6). Individual defendant Edward M. Liddy has also filed a motion to dismiss for lack of *in personam* jurisdiction, pursuant to Fed.R.Civ.P. 12(b)(2).

These are purported class actions brought on behalf of approximately 6,400 former employees of the defendants Allstate Insurance Company and its parent The Allstate Corporation (hereinafter "Allstate") challenging a reorganization implemented by Allstate of its entire sales force, converting them from employees to "independent contractors" and effectuating other changes of status; plaintiffs contend that their rights under the Age Discrimination in Employment Act, 29 U.S.C. §621 et seq. and

the Employee Retirement Income Security Act, 29 U.S.C. §1001 et seq. were violated. The individual defendant is sued for ERISA violations only.

Although invoking only Fed.R.Civ.P. 12(b)(6), Allstate's motions to dismiss incorporate various exhibits not included in the pleadings. I have concluded that these extraneous materials must be ignored for present purposes: the motions actually challenge only the averments of plaintiff's amended complaints, and the parties have recently filed a proposed "Case Management Plan" in which they assume that dispositive motions are to be filed at some time in the future.

Considered as 12(b)(6) motions, it is obvious that the defendants' motions must be denied: the pleadings adequately allege both ADEA and ERISA violations. Whether these claims will survive summary disposition at a later stage remains to be seen.

With respect to the motion of individual defendant Edward M. Liddy to dismiss for lack of personal jurisdiction, plaintiffs argue that, since the ERISA statute provides for nationwide service of process, and since Mr. Liddy has not challenged the adequacy of service of process, this Court may properly assert personal jurisdiction over him. The defendant argues that, since Mr. Liddy cannot be held personally liable under ERISA, the nationwide service of process argument is of no avail. I do not believe the factual record is sufficiently

complete to enable the Court to reach a definitive conclusion as to possible personal liability of Mr. Liddy. I do, however, conclude that Mr. Liddy's "contacts" with Pennsylvania, specifically related to the events which give rise to plaintiffs' claims, suffice to support the exercise of personal jurisdiction over him. In addition to repeated instances of correspondence sent to plaintiffs in Pennsylvania, Mr. Liddy organized, attended, and was the principal speaker at a meeting of Pennsylvania plaintiffs, in furtherance of the very activities which plaintiffs contend violated the ERISA statute. Whether his activities sufficed to support the imposition of personal liability is an issue which should be decided by a motion for summary judgment, not on a jurisdictional motion. There is plainly no due process impediment to the exercise of "long-arm" jurisdiction.

For the foregoing reasons, Allstate's Motions to Dismiss will be denied, without prejudice to reconsideration as a motion for summary judgment at the appropriate time (if such a motion is filed, the exhibits attached to the present motions, and the arguments made therein, may simply be incorporated by reference, without repetition). The motion of the individual defendant to dismiss for lack of jurisdiction will also be denied without prejudice.

An Order follows.