

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

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

ORDER

AND NOW, this 18th day of *January*, 2012, upon consideration of the Motion by Defendants Allstate Insurance Company and the Allstate Corporation (collectively “Allstate”) for a Protective Order Concerning Plaintiffs’ Notice of Videotaped Deposition of Defendants Pursuant to Federal Rule of Civil Procedure 30(b)(6) (Docket No. 273), the Response of Plaintiffs Gene R. Romero, et al. (Docket No. 276), Allstate’s Reply Brief (Docket No. 278), and Plaintiffs’ Sur-reply Brief (Docket No. 279), it is hereby **ORDERED** that the Motion is **GRANTED IN PART and DENIED IN PART** as follows:

1. To the extent Allstate seeks an advisory opinion from this Court about the scope of all forward-going discovery, the Court declines to issue such an order outside the context of specific discovery requests. A generalized definition of “Program-related” or “Release-related” will not properly encompass all relevant documents for each particular discovery request and, as such, the Court shall not provide such a definition. Accordingly, nothing in this Order shall be construed as a ruling on the proper bounds of future discovery requests. All rulings shall be limited solely to the discovery requests presently before the Court;
2. With respect to Topic Numbers 4, 13(b), 13(d), 13(e), 13(f), 15(a), 15(e), 15(h), 15(k), 15(l), 26(e), 28, 30, 31, and 39, Allstate has indicated that it will produce a witness to testify and, as such, the Motion is denied as moot as to these Topics;

3. With respect to Topic Numbers 1, 2, 3, 5, 6, 7, 8, 9, 10, 12(a)-(c), 13(a), 13(c), 14, 15(b)-(d), 15(f), 15(g), 15(I), 15(j), 17, 18(a)-(e), 19, 20, 21, 22, 26(a)-(c), and 32, Allstate's objections are overruled and Allstate shall provide a Rule 30(b)(6) witness to testify as to these Topics;¹
4. With respect to Topic Numbers 16(a)-(c), 29, and 33, Allstate's Objections are sustained and Allstate shall not be required to produce a witness as to these Topics;²
5. With respect to Topic Number 11, Allstate shall produce a witness to testify as to "the impact of the Program on the employee benefits of Employee Agents subject to the Program and what employee benefits were available to Employee Agents who signed the Release after the Program, and the financial consequences of the Program for Employee Agents." Allstate need not produce a witness to testify as to "[t]he financial impact of the Program, including . . . the costs and savings of the Program for Allstate";³

¹ The Court does not find these topics to be either overly broad or unduly burdensome. More importantly, each of these topics appears calculated to lead to the discovery of admissible evidence regarding the validity of the Release and Plaintiffs' various enumerated challenges to that Release. Indeed, for all but two of these Topics, Allstate has expressed its intent to produce a witness "after obtaining further clarity from Plaintiff's counsel about what information is sought with respect to this Topic." As the Court finds that no further clarification is necessary, Allstate's Objections are overruled.

As to two of the Topics — Numbers 7 and 19 — Allstate either equivocated on its intent to provide a witness or blanketly objected. Topic Number 7, however, requests information about complaints or concerns that Allstate received regarding the Release or the Program. This information goes directly to Allstate's knowledge about potential problems with both the Release and the Program and, in turn, to Plaintiff's "part and parcel" theory. Topic Number 19 seeks information about employee benefits available to Employee Agents prior to the Program. This information reflects on the purported duress under which the Plaintiffs signed the Release. Accordingly, the Court orders Allstate to produce a witness on both of these Topics.

² The Court can discern no relationship between these Topics and Plaintiffs' challenges to the Release. While Plaintiffs offer cursory explanations — such as suggesting the Topics provide information regarding Allstate's compliance with the Older Workers Benefits Protection Act (Topic Number 16), general background information about the Program (Topic Number 29), or Allstate's awareness of the illegality and unlawfulness of the Program (Topic Number 33) — the Court finds that these Topics are more directed to the merits of Plaintiffs' underlying claims and should be reserved until the parties are directed to begin such discovery.

³ While information as to the financial impact of the Program on Allstate, including its costs and savings, may be relevant when challenging the ultimate validity of the Program, the

6. With respect to Topic Number 26(d), to the extent Allstate has provided documentary information covering the subject matter at issue, Allstate's Objections are sustained and Allstate shall not be required to produce a witness as to this Topic;⁴
7. With respect to Topic Number 27, Allstate's Objections are sustained and Allstate shall not be required to produce a witness as to this Topic;⁵
8. With respect to Topic Numbers 24(a)-(j), Allstate shall produce a witness to testify as to each of these Topics, but only for the time period between June 1, 1999 and June 30, 2000;⁶
9. With respect to Topic Numbers 23 and 25, Allstate shall produce a witness to testify as to this Topic, but only for the time period between June 1, 1999 and December 31, 2002;⁷

Court finds only a tenuous connection between this information and Plaintiffs' challenges to the Release.

⁴ Should Plaintiffs establish that Allstate has not provided written discovery on this Topic, they may seek appropriate relief from the Court.

⁵ This Topic is vague and ambiguous in that it initially asks for information about the creation and operation of the *Exclusive Agent* Program, but then defines what type of information it is seeking by referencing the *Employee Agent* Program. The Court assumes that there may be a typographical error in this Topic, but declines to speculate as to Plaintiffs' intent.

⁶ Plaintiffs phrase this Topic as seeking various communications by Allstate to Employee Agents prior to June 30, 2000. This open-ended time frame is overly broad in the context of the present litigation. The Program at issue was not officially announced until November of 1999, meaning that a brief period prior to that announcement is sufficient to encompass all relevant communications that could have a bearing on Plaintiffs' challenges to the Release.

To the extent that Allstate objects to Topics 24(f)-(i) on grounds of relevancy, the Court finds that all of these Topics go to potential misrepresentations made by Allstate to induce Plaintiffs to sign the Releases at issue. Accordingly, discovery is warranted. Allstate has failed to substantiate its other objections that the Topics are cumulative of prior Rule 30(b)(6) depositions.

⁷ Plaintiff seeks information on these Topics through December 31, 2003. This Court's October 21, 2010 Memorandum and Order, however, addressed these identical subject areas in the context of Plaintiffs' Requests for the Production of Documents and limited the time frame to between June 1, 1999 and December 31, 2002. For consistency purposes, the same time frame is imposed on the corresponding Rule 30(b)(6) Topics.

- 10 With respect to Topic Number 35, Allstate's objection is sustained and Allstate shall produce a witness to testify as to this Topic, but only as to affirmative defenses that specifically concern the Release;
11. With respect to Topic Numbers 34, 45, and 46, Plaintiffs have indicated their withdrawal of these Topics and, as such, Allstate shall not be required to produce a witness to testify as to these subject areas;
12. With respect to Topic Numbers 36(a)-(e), 40, 41, 42(a), and 42(e) Allstate shall produce a witness to testify as to these Topics and will abide by the time frame specified in the Deposition Notice for this Topic;⁸
13. With respect to Topic Number 42(d), Allstate's objection is sustained and Allstate shall not be required to produce a witness to testify as to this subject area;⁹
14. With respect to Topic Numbers 37, 38, and 42(f), Allstate shall produce a witness to testify as to this Topic and will abide by both the time frame and the scope specified in the Deposition Notice for this Topic;¹⁰
15. With respect to Topic Numbers 42(b) and 42(c), Allstate's Objections on the grounds of privilege are sustained and Allstate need not produce a witness to testify as to these subject areas as they involve information covered almost entirely by the attorney-client and/or work-product privileges;
16. With respect to Topic Number 44, Allstate need not produce a witness to testify as to this subject area based on Allstate's representation that no responsive information exists;

⁸ These Topics go to Allstate's preservation and/or spoliation of evidence. As Allstate's preservation obligation began on the date it reasonably anticipated litigation and continues to the present, a date range of January 1, 1999 — a date when Allstate anticipated litigation — to the present is entirely appropriate for these Topics.

⁹ As set forth in the Court's separate Order also issued today on Plaintiffs' Motion to Determine the Sufficiency of Allstate's Answers to Requests for Admissions, Allstate could not properly produce testimony on this subject without contacting an excessively large group of people, many of whom may not be within its control.

¹⁰ Again, these Topics involve Allstate's preservation efforts and, as such, are appropriately extended to present day. To the extent Allstate seeks to limit these requests to "Release-related" documents, the Court rejects this limitation for the reasons set forth in the Court's separate Order also issued today on Plaintiffs' Motion to Determine the Sufficiency of Allstate's Answers to Requests for Admissions.

17. The Rule 30(b)(6) deposition at issue in this Motion shall occur within thirty (30) days from the date of this Order at a date, time, and place that is mutually agreeable to all parties;
18. During the course of the deposition, Allstate shall be entitled to raise any well-founded privilege or other objections to specific questions posed by Plaintiffs.

It is so **ORDERED**.

BY THE COURT:

s/ Ronald L. Buckwalter
RONALD L. BUCKWALTER, S.J.