

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

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GENE R. ROMERO, <i>et al.</i> ,		:	Civil Action No.: 01-CV-3894 (RLB)
	Plaintiffs,	:	
v.		:	CLASS ACTION
		:	
ALLSTATE INSURANCE COMPANY,		:	
<i>et al.</i> ,		:	
	Defendants.	:	
<hr/>		:	
EQUAL EMPLOYMENT OPPORTUNITY		:	Civil Action No.: 01-CV-7042
COMMISSION,		:	(Consolidated with 01-CV-3894)
	Plaintiffs,	:	
v.		:	
		:	
ALLSTATE INSURANCE COMPANY,		:	
	Defendant.	:	
<hr/>		:	
GENE R. ROMERO, <i>et al.</i> ,		:	Civil Action No.: 01-CV-6764
	Plaintiffs,	:	
v.		:	CLASS ACTION
		:	
THE ALLSTATE CORPORATION, <i>et al.</i> ,		:	
	Defendants.	:	
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**PLAINTIFFS’ MEMORANDUM OF LAW IN OPPOSITION TO ALLSTATE’S
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

This case was filed more than ten years ago. In 2009, the Third Circuit held that Plaintiffs are entitled to critical discovery—to which they previously had been deprived—to show that the Release that they were forced to sign as part of the Mass Termination Program (the “Program”) is invalid. Rather than comply with the Third Circuit’s mandate, however, Defendants have done everything in their power to prevent Plaintiffs from getting this important discovery. As a result, Plaintiffs have been forced to file three motions to compel and, most recently, a motion to determine the sufficiency of Allstate’s responses to Plaintiffs’ Requests for Admission.

Allstate’s instant motion now seeks to further obstruct Plaintiffs’ discovery efforts. Plaintiffs served Allstate with a proper Rule 30(b)(6) Notice, which seeks relevant deposition testimony on thirty-four (34) Topics that pertain to Plaintiffs’ challenges to the Release and an additional eight (8) Topics relating to Allstate’s obligation to preserve relevant documents in anticipation of litigation.¹ However, Allstate has refused to identify a single representative who will provide testimony on a single Topic. Instead, Allstate has moved for a protective order to preclude Plaintiffs from obtaining “testimony on ‘Program’ or ‘Program-related’ topics,” or, in the alternative, to suspend the deposition until “the Court provides further direction as to the scope of Release-related discovery.” Allstate’s motion fails for at least the following reasons.

First, despite its heavy burden to demonstrate why it is entitled to a protective order, Allstate has failed to identify which Topics are allegedly improper—much less why any particular Topic is unrelated to Plaintiffs’ challenges to the Release. Nor has Allstate come

¹ Although Plaintiffs’ Rule 30(b)(6) Notice identified 45 Topics, Plaintiffs have agreed not to seek deposition testimony on three Topics at this juncture.

forward with any evidence that it will suffer harm if it must produce deponents to testify as to Plaintiffs' Rule 30(b)(6) Topics. For this reason alone, Allstate's motion should be denied.

Second, there is simply no basis to prevent Plaintiffs from obtaining the deposition testimony they seek. Allstate does not dispute that Plaintiffs are entitled to deposition testimony concerning Plaintiffs' challenges to the Release, nor does Allstate argue that testimony about Allstate's required preservation activities is somehow prohibited. This is precisely the testimony that Plaintiffs' Rule 30(b)(6) Notice seeks. Although several Topics seek factual information about the "Program" or use the phrase "Program-related," Plaintiffs are entitled to this testimony because:

- Information about the Program is necessary for Plaintiffs to understand and show the factual context for the Release, which was part of the Program and purports to insulate Allstate from liability for the Program.
- Information about the Program is critical to support each of Plaintiffs' challenges to the Release, including that: (a) the Program was illegal or unlawful and the Release was "part and parcel" of that scheme; (b) Plaintiffs did not sign the Release "voluntarily," in part because the Program left them with no other viable option; (c) Plaintiffs did not sign the Release "knowingly" because Allstate made misrepresentations and material omissions about the Program; and (d) the Release was unconscionable, in part because of the pressures, constraints, unlawfulness, and financial impact of the Program.
- Plaintiffs are entitled to get deposition testimony to determine whether Allstate complied with its general duty to preserve relevant documents in anticipation of this litigation. At a minimum, Plaintiffs are entitled to understand the steps that Allstate took to search for and preserve documents about the Program, which necessarily include some of the very documents that Plaintiffs seek to show that the Release is invalid.
- This Court has already rejected a nearly identical argument to the one that Allstate now advances. In its October 21, 2010 Order, the Court authorized the type of discovery concerning the Program that Plaintiffs' Rule 30(b)(6) Notice now seeks, holding that Plaintiffs are entitled to such discovery, among other reasons, to show that the Release was "part and parcel" of an illegal scheme.

Third, although Allstate appears to request—in its proposed Order—that the Court stay the Rule 30(b)(6) deposition until some unspecified point in the future, Allstate has not met its burden to establish that this form of extraordinary relief should be entered. Allstate’s motion fails to argue for a stay, fails to even identify the standard for a stay, and does not attempt to show why Allstate has met that standard. Accordingly, Allstate is not entitled to this relief.

Finally, although Allstate remarkably suggests that—at some unspecified date in the future—it may file yet another motion for a protective order to prevent Plaintiffs’ Rule 30(b)(6) deposition, Allstate is not entitled to a second bite at the apple. As a matter of law, Allstate cannot reserve objections that it had knowledge of, but did not raise, address, and support in this instant motion. Allstate’s proposed piecemeal approach to challenging Plaintiffs’ Rule 30(b)(6) Notice will only serve to further delay this litigation, and should not be tolerated.

Put simply, Allstate’s motion seeks to prevent Plaintiffs from taking permissible and necessary discovery simply on the basis that some of the Topics use the term “Program” or “Program-related,” while overlooking the actual substance of Plaintiffs’ 30(b)(6) Notice. Because Allstate has fallen woefully short of meeting its burden for a protective order, Allstate’s motion should be denied, and Allstate should be required to produce a deponent to testify as to each of the Topics within 20 days.

II. FACTUAL BACKGROUND

A. Defendants Forced Plaintiffs And Other Employee Agents To Sign The Release As Part Of The Mass Termination Program.

In November 1999, Allstate utilized approximately 15,000 “captive” insurance agents in the United States who could sell and service only Allstate-authorized insurance and financial services products. (*See* Pls. Sec. Am. Compl., Doc. No. 223, at ¶¶ 55, 72, 99). More than 6,000 of these “captive” insurance agents were employee agents, as opposed to so-called “independent

contractors,” with standardized “R830” or “R1500” contracts which permitted termination only for “good cause.” (*Id.* at ¶¶ 1, 3, 56, 60-62, 72, 183-198). These standardized “R830” and “R1500” contracts created an employment relationship that entitled Allstate’s employee agents, including Plaintiffs, to a broad and comprehensive package of employee benefits, including a pension plan, a defined contribution plan, comprehensive medical insurance, dental insurance, long-term disability insurance, and life insurance. (*Id.* at ¶¶ 58, 65, 111-112).²

As part of an effort to eliminate the payment of benefits to employee agents and to weed out older employee agents, Allstate designed and implemented the Mass Termination Program, which it called the “Preparing for the Future” Group Reorganization Program (hereinafter “Program”). (*Id.* at ¶¶ 73-80, 111). Through the Program, Allstate terminated its employment relationship with virtually all remaining employee agents in the United States by December 31, 2000. (*Id.* at ¶¶ 75, 77). No part of the Program was subject to negotiation. (*Id.* at ¶¶ 88-91, 157).

Apparently recognizing that the Program was illegal and violated its agents’ rights (*id.* at ¶¶ 73, 78-85, 153), Allstate coerced, pressured, and misled employee agents into signing the Release, which purported to “release, waive, and forever discharge Allstate . . . from any and all liability . . . or claims for relief or remuneration of any kind whatsoever . . . arising out of . . . the termination of my employment . . . or my transition to independent contractor status” (*Id.* at ¶ 87).

On August 1, 2001, Plaintiffs filed a putative class action lawsuit against Defendants (“*Romero I*”), seeking relief for claims arising out of the illegal Program and Release. Each

² Most employee agents had to invest large amounts of their own money in their agencies and books of business, to recruit family members to work for minimal or no pay, and to work long hours themselves. (*Id.* at ¶¶ 61, 65, 92-97). To recoup their investments, therefore, employees had to remain with Allstate so that they could continue to earn commissions upon the renewal of policies they sold and, eventually, the retirement benefits promised by the company. (*Id.*)

Plaintiff has asserted claims for: age discrimination and retaliation under the Age Discrimination in Employment Act (“ADEA”); interference with pension and other employment-related benefits under Section 510 of the Employee Retirement Income Security Act (“ERISA”); unlawful retaliation under the ADEA and ERISA; breach of contract; and breach of fiduciary duty. (*See* Pls. Sec. Am. Compl., Doc. No. 223).

Anticipating that Defendants would raise the Release as a defense to certain of these claims (*see* Defs. Answer, Doc. No. 228, at Third Affirmative Def.), Plaintiffs also seek a declaratory judgment that the Release is invalid for multiple reasons, including that:

- (1) it was executed under duress;
- (2) it was not executed knowingly and voluntarily, in part because of a series of misrepresentations by Defendants;
- (3) there was no valid consideration for the Release;
- (4) Defendants violated public policy in conditioning continued service on execution of the Release;
- (5) it was procedurally and substantively unconscionable;
- (6) Defendants retaliated against non-Release-signers and threatened retaliation against other agents;
- (7) Defendants violated the disclosure requirements of the Older Workers Benefit Protection Act (“OWBPA”), 29 U.S.C. § 626(f)(1); and
- (8) the Release was part and parcel, and in furtherance of, Defendants’ unlawful scheme to interfere with the statutory and contractual rights of its employee agent—that is, the Mass Termination Program.³

(*See* Pls. Sec. Am. Compl., Doc. No. 223, at ¶¶ 150-159).

About four months later, the *Romero I* Plaintiffs, joined by four other Plaintiffs, brought a separate action against Allstate and the Administrator of the Agents Pension Plan (“*Romero II*”), alleging that they violated the “anti-cutback” and fiduciary-duty provisions of ERISA. (*See* Pls.

³ Plaintiffs refer to this challenge to the Release as their “part and parcel” challenge.

Am. Compl., No. 01-6764, Doc. No. 76). As in *Romero I*, the defendants in *Romero II* have asserted the validity of the Release as an affirmative defense to Plaintiffs' claims. (See Defs. Answer, No. 01-6764, Doc. No. 82, at Sec. Affirmative Def.).

Finally, on December 27, 2001, the United States Equal Employment Opportunity Commission ("EEOC") brought its own action against Allstate Insurance Company, alleging that it unlawfully retaliated against all employee agents, in violation of the ADEA and other federal employment statutes, by refusing to permit them to continue as Allstate employees unless they signed the Release. Like Plaintiffs, the EEOC seeks a declaratory judgment that the Release is invalid. (EEOC First Am. Compl., No. 01-7042, Doc. No. 2, at pages 5-7).⁴

B. The Third Circuit Has Ordered Discovery Concerning The Program.

The Third Circuit has ordered "further discovery into the *facts* surrounding the signing of the releases." *Romero v. Allstate Ins. Co.*, 344 Fed. App'x. 785, 793 (3d Cir. 2009) (emphasis added). It has also ordered that Plaintiffs are entitled to discover information to support their challenges to the Release, including "that the releases were part of an illegal scheme; that they were not signed knowingly or voluntarily; and that they were unconscionable." *Id.* This mandate is plain and clear.

On April 7, 2010, this Court entered a Case Management Order ("CMO") requiring the parties to start producing documents responsive to document requests on a rolling basis within 30 days after the entry of the CMO – that is, by May 7, 2010. (See Apr. 7, 2010 Case Management Order, Doc. No. 200). The CMO also addressed Plaintiffs' "part and parcel" theory for why the Release is invalid, explaining that "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." (*Id.*)

⁴ *Romero I* and the action brought by the EEOC were consolidated in 2002.

(emphasis added). This provision does not *preclude* Plaintiffs from seeking such discovery at this juncture.

Consistent with the Third Circuit’s mandate and the CMO, Plaintiffs served document requests concerning Plaintiffs’ challenges to the validity of the Release—which necessarily included documents concerning the Program. Among other documents, Plaintiffs sought electronic documents “generated, received, viewed, or saved by” any key custodian that mentioned the Program, documents relating to “any report, analysis, summary, presentation, or recommendation . . . with respect to the Mass Termination Program,” and documents relating to “meetings of the team of individuals led by Hutton that designed the Mass Termination Program . . .” (Pls. Doc. Reqs., Doc. No. 214-7, attached as Ex. C to Pls. Mot. to Compel, at Doc. Request Nos. 5, 43, 45). Because Defendants refused to produce documents responsive to those requests and refused to confirm that they had preserved all electronically-stored information (“ESI”), Plaintiffs filed their first motion to compel on June 25, 2010. (*See* Pls. Mot. To Compel, Doc. No. 214).

C. This Court Has Ordered Defendants To Produce Documents Related To The Program.

On October 21, 2010, this Court granted, in large part, Plaintiffs’ first motion to compel, and entered an Order compelling Defendants to produce all responsive documents, including key custodians’ ESI concerning the Program. (*See* Oct. 21, 2010 Order, Doc. No. 237). Although the Court did not require Allstate to certify that it has taken all necessary steps to preserve documents since it reasonably anticipated litigation, the Court invited Plaintiffs to seek such information through discovery and then to present any evidence of spoliation to the Court. (Oct. 21, 2010 Mem. Op., Doc. No. 236, at 25).

In its October 21, 2010 Order, the Court expressly rejected Allstate’s argument that Plaintiffs were not entitled to any documents—at this juncture—concerning their part and parcel theory, including documents related to the Program and to the “merits of plaintiffs’ underlying claims that the Program was unlawful.” (Allstate Opp. Mot. To Compel, Doc. No. 218, at 7-16). The Court held that the “unambiguous language” of the Third Circuit’s mandate “makes clear” that Plaintiffs are entitled to full discovery “on their theory that the Releases are void because they are ‘part and parcel’ of an illegal scheme.” (Oct. 21, 2010 Mem. Op., Doc. No. 236, at 8). The Court then reasoned that this was fully consistent with the CMO, which could not “remotely be construed as limiting or precluding Plaintiffs’ ability to take discovery on its ‘part and parcel’ theory at this stage of the litigation.” (*Id.* at 9). Because the Court held that “Plaintiffs are entitled to discovery relevant to proving that the Releases are void under a ‘part and parcel’ theory” (*id.*), Plaintiffs were entitled to the Program-related documents which they sought.

D. Plaintiffs Recently Were Forced To File Another Motion To Get Factual Admissions About What Steps Allstate Failed To Take To Preserve Relevant Documents, Including Documents Related To The Program.

Despite the Third Circuit’s mandate and this Court’s October 21, 2010 Order, Allstate has not produced the type and scope of documents, including ESI, that would be reasonable to expect for a class action of this size and magnitude. By way of example only, Allstate has failed to produce:

- **any** ESI, with corresponding metadata, for sixty-three (63) of the eighty-two (82) individuals from whom Allstate agreed to collect, search, and produce documents (“agreed-upon custodians”);
- **any** documents, whether in hard-copy or electronic format, from **any** of the Allstate e-mail accounts or work-related computers – over which Allstate assumed possession – of any of the thirty-three named Plaintiffs, who are among the parties’ agreed-upon custodians;

- **any** ESI from the custodial files of twenty-two (22) of the individuals whom Defendants identified as “most knowledgeable” about the Release and Program; and
- **any** hard-copy documents from the custodial files of eighteen (18) of the individuals whom Defendants identified as “most knowledgeable” about the Release and Program.

(Pls. Am. Mot. To Determine Sufficiency of Allstate’s RFA Answers, (“RFA Motion”), Doc. No. 269, at 9-10).⁵ Moreover, Allstate has conceded that it did not take all necessary steps to preserve documents and, therefore, may have lost relevant documents. (*Id.* at 10-11).

To confirm the facts concerning Allstate’s failure to preserve and collect relevant documents, including ESI relating to the Program, for many of the parties’ agreed-upon custodians, Plaintiffs served Requests for Admissions (“Requests”) upon Allstate. (*Id.* at 11-12). In their Requests, Plaintiffs asked Allstate to admit that, in essence, it failed to follow the proper procedures for gathering and preserving ESI for each of the agreed-upon custodians for whom Allstate produced no ESI or virtually no ESI. (*Id.* at 12).

After taking more than seventy (70) days to respond, Allstate refused to fully answer Plaintiffs’ Requests. Instead of being forthcoming about the steps it took or failed to take to preserve relevant documents,⁶ Allstate: (a) refused to admit or deny nearly half of the Requests based upon its assertion that the phrase “Program-Related” was “overly broad, unduly burdensome, vague, ambiguous, indefinite, and subject to multiple interpretations;” and (b) unilaterally rewrote other Requests by replacing “Program-related” with Allstate’s narrow and unworkable definition of “Release-related.” (*Id.* at 13).

⁵ Although Allstate’s opposition brief to Plaintiffs’ Amended Motion To Determine The Sufficiency Of Allstate’s Responses To Plaintiffs’ Requests purports to provide a number of justifications for these failures (Doc. No. 274), Allstate does not dispute the facts themselves.

⁶ Plaintiffs have documented these failures in its two motions to compel responses to Plaintiffs’ interrogatories, and its motion to challenge the sufficiency of Allstate’s responses to Plaintiffs’ Requests. (*See* Pls.’ Mots. to Compel Answers to Pls.’ First Set of Interrogs., Doc. Nos. 231 and 262; Pls.’ RFA Motion., Doc. No. 269).

During a meet and confer on Allstate's objections, Plaintiffs explained why Allstate was required to answer Plaintiffs' "Program-related" Requests, as drafted. Plaintiffs further confirmed that "Program-related" simply refers to all factual information about the Program and explained why Allstate's objections to the phrase are frivolous. (*Id.* at 14). Nonetheless, Allstate still refused to answer Plaintiffs' Requests, as written. Accordingly, on October 3, 2011, Plaintiffs filed their motion to determine the sufficiency of Plaintiffs' Requests which is currently pending before this Court. (Doc. No. 269).

E. Plaintiffs Served A Targeted Rule 30(b)(6) Notice To Get Deposition Testimony Important To Plaintiffs' Challenges To The Release.

Shortly before filing their RFA Motion, Plaintiffs served Allstate with a Rule 30(b)(6) Notice for a deposition to take place on October 5, 2011. (*See* Pls. Rule 30(b)(6) Notice, Doc. No. 273-4, attached as Ex. 1 to Def. Br. In Support Of Mot. For Protective Order ("Def. Br."), Doc. No. 273). In their Rule 30(b)(6) Notice, Plaintiffs identified 45 Topics.⁷ Each of Plaintiffs' Topics is described with reasonable particularity and seeks relevant deposition testimony.

For example, Topics 1 through 35 seek specific testimony in support of Plaintiffs' substantive legal challenges to the Release. This includes the following information:

- (a) Basic information concerning the Release, including the creation, content, and approval of various facets of the Release (Topics 2-4), complaints about and reactions of employee agents to the Release (Topic 7, 29), efforts to modify the Release (Topic 5), communications about the Release by key persons within Allstate and the EEOC (Topics 8-10, 14); and the interpretation and execution of the Release (Topics 6, 13);
- (b) Basic information concerning the Program and its oppressive and retaliatory nature, including the structure of the Program (Topic 1), complaints about the Program and reactions of employee agents to the Program (Topic 7, 29), and

⁷ Plaintiffs inadvertently omitted Topic 43 and under cover letter dated October 18, 2011, Plaintiffs agreed that they would not seek testimony, at this juncture, on three of their original Topics, specifically, Nos. 34, 45 and 46. (*See* Pls. Oct. 18, 2011 Letter, Doc. No. 273-9, attached as Ex. 6 to Def. Br., at 9 n. 4).

communications about the Program by key persons within Allstate and with the EEOC (Topics 8-10, 14);

- (c) The duress under which employee agents had no choice but to sign the Release, including the financial impact of the Release and Program (Topics 11, 17) and what they lost as a result of the Program, such as investments that employee agents put into their agencies and books of business (Topic 18) and the employee benefits earned by Plaintiffs prior to the Program (Topic 19);
- (d) The illegality and unlawfulness of the Program, including Allstate's awareness of the potential illegality or unlawfulness of the Program (Topics 12, 28) and the basis for Allstate's assertion that contracts could be terminated without cause (Topic 33);
- (e) Compliance of the Release with the OWPBA (Topics 15-16);
- (f) The factual bases behind misrepresentations that were made about the Release and Program, including about non-compete, non-solicitation, and confidentiality provisions in Plaintiffs' contracts (Topic 20), Allstate's rehiring policies (Topic 21-22), commission rates (Topic 23), plans to eliminate or terminate so-called low-performing employee agents (Topic 25), and what Allstate said about each of these issues (Topic 24);
- (g) The lack of consideration for each option identified in the Release (Topic 32), which includes what employee agents were legally entitled to prior to the Release, such as their ability to transfer and acquire books of business prior to the Program (Topic 30-31), being able to convert to so-called independent contractors without having to sign a Release (Topic 26), and serving as employee agents (Topic 27); and
- (h) The factual bases of Allstate affirmative defenses (Topic 35).

(Pls. Rule 30(b)(6) Notice, Doc. No. 273-4).

Topics 36-44 seek testimony concerning Allstate's preservation efforts. Each Topic is relevant to understanding whether Allstate complied with its obligation to preserve relevant documents in anticipation of this litigation, including documents that may help to support Plaintiffs' legal challenges to the validity of the Release. In particular, Plaintiffs seek deposition testimony concerning the e-mail systems that Allstate used after January 1, 1999 (Topic 36), the computer systems that Allstate used to create, receive, and store ESI related to the Program

(Topic 37), the categories of ESI related to the Program (Topic 38), the electronic storage devices that custodians used (Topic 39), document retention and destruction policies (Topic 40), the manner by which Allstate performed backups of ESI on its systems (Topic 41), the steps that Allstate took to search for and preserve Program-related documents for agreed-upon custodians (Topic 42), and the content and identity of Program-related documents that have not been preserved (Topic No. 44).

Moreover, contrary to what Allstate suggests in its Allstate's motion, only fifteen (15) Topics in Plaintiffs' Rule 30(b)(6) Notice use the term "Program" or "Program-related"—which Plaintiffs have clearly defined in their Rule 30(b)(6) Notice. (*See* Pls. Rule 30(b)(6) Notice, Doc. No. 273-1, attached as Ex. 1 to Def. Br., at Definition Nos. 33, 34). Four of these Topics seek deposition testimony about Allstate's creation and preservation of "Program-related" documents (Nos. 37-38, 42, and 44). The remaining Topics seek critical information relevant to Plaintiffs' challenges to the Release, specifically, the structure of the Program (No. 1), complaints and reactions to the Program (Nos. 7, 29), communications with certain important persons about the Program (Nos. 8-10, 13), the financial impact of the Program (Nos. 11, 17, 22), and Allstate's awareness of the potential illegality of the Program (No. 12).

F. Allstate Served 65 Pages Of Objections To Plaintiffs' Rule 30(b)(6) Notice.

After receiving Plaintiffs' Rule 30(b)(6) Notice, Allstate requested a meet and confer. On September 28, 2011, less than 24 hours before the scheduled meet and confer, Plaintiffs received Allstate's Responses and Objections to Plaintiffs' Rule 30(b)(6) Notice ("Allstate's Objections"). (*See* Pls. Oct. 18, 2011 Letter, Doc. No. 273-9 attached as Ex. 10 to Def. Br.). Allstate's Objections were more than 65 pages long. (*See* Def. Obj., Doc. No. 273-7, attached as Ex. 4 to Def. Br.).

In its Objections, Allstate objected to providing deposition testimony on Topics that seek “Program-related” information, purported to object to nearly half of the Topics on the grounds that they are “repetitious and cumulative of previous 30(b)(6) testimony taken by Plaintiffs in this matter,” and raised a number of additional conclusory and boilerplate objections. (*Id.*) Allstate did not identify a single witness to testify on a single Topic. Instead, Allstate: (a) refused to produce a witness to testify as to certain Topics; (b) purported to agree to produce a witness to testify about more than half of the Topics, but only after obtaining some unspecified “further clarity from Plaintiffs’ counsel about what information is sought”; and (c) stated that it would tender a witness on other Topics, but did not identify whom that person would be or when that person would be available to testify. (*Id.*; see also Pls. Oct. 18, 2011 Letter, Doc. No. 273-9, attached as Ex. 6 to Def. Br., at 1-10).

The parties held a meet and confer on September 29, 2011. (Pls. Oct. 18, 2011 Letter, Doc. No. 273-9, at 1). At that time, Plaintiffs explained some of the reasons why Allstate’s responses and objections to Plaintiffs’ Rule 30(b)(6) Notice were insufficient. (*Id.*) However, because Allstate served their Objections on the day before the meet and confer, Plaintiffs informed Allstate that they would respond, in writing, after they had sufficient time to process Allstate’s Objections. (*Id.*).

On October 18, 2011, Plaintiffs sent a comprehensive letter to Allstate that demonstrated why each of Allstate’s objections failed as a matter of law. (*Id.*) Plaintiffs explained that Allstate’s objections to Topics that seek “Program-related” testimony lack merit because information related to the Program is relevant to Plaintiffs’ challenges to the Release. (*Id.* at 2). Plaintiffs further explained, in great detail, why each of Allstate’s other objections, including its

objection that Plaintiffs were seeking duplicative testimony, lacked merit.⁸ (*Id.* at 2-4). As a result, Plaintiffs requested that by October 26, 2011, Allstate withdraw its objections and identify both the dates on which it would make its corporate representative(s) available and the names of such representative(s). (*Id.* at 2, 4, 5, 6, 7, 9-10).

G. Rather Than Continuing To Discuss The Scope of The Rule 30(b)(6) Deposition With Plaintiffs, Allstate Filed The Instant Motion For A Protective Order.

On October 26, 2011, Allstate sent a letter to Plaintiffs stating that it was standing by “its objections as necessary, appropriate, and proper.” (Def. Oct. 26, 2011 Letter, Doc. No. 273-10, attached as Ex. 7 to Def. Br.). Allstate further concluded that although it was “willing to meet and confer” on its objections, it did “not see the utility in doing so” until some unidentified point in the future, after “the Court provides the parties with guidance concerning the appropriate scope of Release-related discovery.” (*Id.* at 3-4).

Rather than giving Plaintiffs a chance to respond to its unilateral determination that there was “no utility” in further discussing the Rule 30(b)(6) Notice, Allstate filed the instant motion—three business days later. Remarkably, despite having agreed in its Objections to provide a representative to provide testimony on certain Topics, Allstate now contends that it need not produce Rule 30(b)(6) deposition testimony “until after Plaintiffs have limited the scope of this notice to only Release-related discovery topics, or, in the alternative, until such time as the Court provides further direction as to the scope of Release-related discovery.” (Def. Br., Doc. No. 273, at 13). As described below, Allstate’s motion lacks merit, and Allstate should be compelled to provide deposition testimony on each of the Topics within 20 days (or as otherwise agreed to by the parties).

⁸ Tellingly, Allstate has not moved for a protective order on these objections. To the extent Allstate has not withdrawn these objections, it has waived the right to assert them.

III. ARGUMENT

Despite failing to provide any analysis to show why specific Topics in Plaintiffs' Rule 30(b)(6) Notice are inappropriate, Allstate nonetheless contends that it is entitled to a protective order against that Rule 30(b)(6) deposition. In addition, Allstate suggests that even if the Court denies its motion for a protective order, it is nonetheless entitled: (a) to a stay of the Rule 30(b)(6) deposition until this Court provides guidance as to the scope of Release-related discovery; and (b) to file a renewed motion for a protective order, based upon new arguments, at some unspecified point in the future.

As described below, Allstate has failed to meet its burden for any of this relief.

A. Allstate Has Not Met Its Burden For A Protective Order.

It is well-settled that a party moving for a protective order must demonstrate "good cause." Fed. R. Civ. P. 26(c). This is a "heavy burden." *Wright v. Montgomery Cnty*, No. 96-4597, 1998 WL 848107, at *5 (E.D. Pa. Dec. 4, 1998); *see, e.g., Smith v. BIC Corp.*, 869 F.2d 194, 201 (3d Cir. 1989) (finding that moving party failed to satisfy burden).

To satisfy this heavy burden, the moving party must show that "disclosure will work a clearly defined and serious injury to the party seeking closure." *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d Cir. 1994) (internal citations and quotations omitted). Because this injury must be "shown with specificity," *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1071 (3d Cir. 1984), the Third Circuit repeatedly has warned that "[b]road allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not support a good cause showing." *Pansy*, 23 F.3d at 786 (internal citations omitted); *see, e.g., Glenmede Trust Co. v. Thompson*, 56 F.3d 476, 483-84 (3d Cir. 1995) (agreeing with district court's denial of motion for protective order because moving parties "failed to sustain their burden of

demonstrating they will sustain a specific injury from the public dissemination of the privileged documents . . .”).

Here, Allstate has failed to satisfy its heavy burden for multiple reasons. First, Allstate fails to identify the Topics that it contends are improper, much less show why they are improper and why Allstate would suffer harm by preparing a knowledgeable deponent on each Topic. Second, the requested deposition testimony is relevant to Plaintiffs’ challenges to the Release, and is expressly permitted by the Third Circuit, the CMO, and this Court’s October 21, 2010 Order. Third, the parties have repeatedly sought and answered discovery concerning the Program since the Third Circuit’s mandate.

1. Allstate Has Failed To Identify A Clear And Specific Injury It Would Suffer Absent A Protective Order.

Allstate seeks a protective order based upon its conclusory assertion that Plaintiffs’ Rule 30(b)(6) Notice seeks “testimony on ‘Program’ or ‘Program-related’ topics or otherwise seeks information beyond discovery that relates to Plaintiffs’ specific challenges to the validity of the Release.” (Def. Br., Doc. 273, at 3). Ignoring its burden, however, Allstate does nothing to support this position.

Allstate does not identify which Topics are the subject of its motion. In fact, other than cursorily stating that a few Topics overlap with Plaintiffs’ RFA Motion (*id.* at 7), Allstate does not even identify which Topics are purportedly improper. Nor does Allstate discuss the language of a single Topic to show why it purportedly does not relate to Plaintiffs’ legal challenges to the Release. Worse yet, Allstate offers no evidence to show why it would be burdensome for Allstate to prepare a deponent on a single Topic. Accordingly, Allstate has failed to carry its burden. *See, e.g., Pepsi-Cola Metro. Bottling Co., Inc. v. Ins. Co. of N. Am., Inc.*, No. 10-mc-222, 2011 WL 239655, at *3 (E.D. Pa. Jan. 25, 2011) (denying motion for protective order

without a showing of a “clearly defined and serious injury . . .”) (internal citation and quotation omitted).

Because Allstate has failed to identify—much less show—what purported harm it will suffer if it has to provide deposition testimony on each of Plaintiffs’ Topics, Allstate’s motion should be denied.

2. Plaintiffs’ Rule 30(b)(6) Notice Is Not Overbroad And Seeks Relevant Information.

A party is entitled to “obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense . . .” Fed. R. Civ. P. 26(b)(1). Relevance is “construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case.” *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978) (internal citation omitted).

Despite failing to identify the Topics that are the subject of its motion, Allstate contends that Plaintiffs’ Rule 30(b)(6) Notice is overbroad because it seeks information related to the Program. As described below, this argument is meritless for at least the following reasons:

(a) information related to the Program, including the preservation of Program-related documents, is relevant to Plaintiffs’ challenges to the Release; (b) the Court already has rejected a similar challenge by Allstate and has ordered Allstate to produce responsive documents that fall within Plaintiffs’ definitions of “Program” and “Program-related”; and (c) Plaintiffs have continuously requested this information throughout the discovery process.

a. Information Related To The Program Is Relevant To Plaintiffs' Challenges To The Release.

Allstate contends that “discovery should be tailored to the facts surrounding Plaintiffs’ specific challenges to the validity of the Release.” (Def. Br., Doc. No. 273, at 2). Contrary to Allstate’s position, Plaintiffs’ Rule 30(b)(6) Notice does precisely that.

The Third Circuit authorized discovery “into the facts surrounding the signing of the releases.” *Romero*, 344 F. App’x. at 793. The Third Circuit explained that Plaintiffs are entitled to discover information to support their challenges “that the releases were part of an illegal scheme; that they were not signed knowingly or voluntarily; and that they were unconscionable.” *Id.* Consistent with the Third Circuit’s mandate, Plaintiffs are entitled to depose Allstate’s corporate representative(s) on the noticed Topics that relate to the Program for several reasons.

As an initial matter, Plaintiffs are entitled to basic factual information about the Program. The Release was developed as part of the Program, and purports to shield Allstate from liability for implementing the Program. (Pls. Sec. Am. Compl., Doc. No. 223, at ¶¶ 86-91). To understand the context in which Allstate forced Plaintiffs to sign the Release, Plaintiffs are entitled to deposition testimony concerning the facts, details, and structure of the Program and communications about the Program. (*Id.*; *see also id.* at ¶¶ 92-107).

Second, the Program is at the heart of Plaintiffs’ challenges to the Release. Although Allstate agrees that Plaintiffs may seek deposition testimony on its challenges to the Release (Def. Br., Doc. 273, at 11-12), Allstate simply ignores that the information about the Program that Plaintiffs have requested in their Topics is critical to establishing these theories:

- ***Not Voluntary.*** To show that Plaintiffs did not sign the Release “voluntarily,” it is important for Plaintiffs to obtain binding deposition testimony on, among other topics, the structure for, financial impact of, and misrepresentations and material omissions about the Program—that is, the oppressive context in which Allstate forced Plaintiffs to sign the Release.

- ***Not Knowing.*** To show that Plaintiffs did not sign the Release “knowingly,” it is important for Plaintiffs to demonstrate that Allstate made misrepresentations and omissions about the Program, which necessitates deposition testimony about, among other topics, how the Program operated, what Allstate said about the Program and about what would happen after the Program, and why those statements were untrue.
- ***Part and Parcel.*** To show that the Program was an illegal or unlawful scheme (and that the Release was “part and parcel” of this illegal or unlawful scheme), Plaintiffs are entitled to explore the various facets of the Program, including why it was created, how it was structured and implemented, what Allstate said about the Program, and whether Allstate believed it was unlawful or illegal.
- ***Lack of Consideration.*** To establish that Plaintiffs did not receive, in exchange for executing the Release, anything of value beyond that to which they were already entitled, it is important for Plaintiffs to obtain deposition testimony on, among other things, the structure of the Program, what Plaintiffs were entitled to prior to the Program, and how the Program affected that to which Plaintiffs were already entitled, including the financial impact of the Program on employee agents.
- ***Duress.*** To demonstrate that Plaintiffs were effectively forced to sign the Release under duress, Plaintiffs are entitled to deposition testimony about, among other things, what the Program was, why it gave employee agents no meaningful choice but to sign the Release, and what Allstate executives, managers, and employees said about the Release.

Given the centrality of the Program to Plaintiffs’ legal theories, Allstate cannot now contend that Plaintiffs’ Topics are somehow improper because they seek testimony about the Program. For instance, Allstate’s motion takes issue with Topics 1 and 11 (Def. Br., Doc. No. 273, at 7), but nothing can be more relevant to Plaintiffs’ challenges to the Release:

- Topic No. 1 seeks testimony about “[t]he structure of the Program and the role of the Release as part of the Program.” As described above, this basic information is necessary to show the context of the Release, and is relevant to each of Plaintiffs’ challenges.
- Topic No. 11 seeks testimony concerning “[t]he financial impact of the Program, including, but not limited to, the costs and savings of the Program for Allstate . . . and the financial consequences of the Program for Employee Agents.” This testimony is relevant to show, among other things, that the Release was part and parcel of an illegal scheme, that the Release was not supported by the requisite consideration, that the Release was not knowingly and voluntarily signed, and that employee agents had to sign the Release under duress, because—as a result of the Program—they had no other option but to sign the Release.

Like other Topics in Plaintiffs' Rule 30(b)(6) Notice, Topics 1 and 11—that is, testimony concerning the “structure” and “financial impact” of the Program—are critical to show that the Release is invalid and unenforceable.

Third, although Allstate notes in its Motion that four Topics (Nos. 37-38, 42(a)-(f), and 44) seek testimony concerning Allstate's preservation of “Program-related” documents (Def. Br., Doc. No. 273, at 7), these Topics are entirely proper. Each of these Topics seeks testimony necessary for Plaintiffs to understand whether Allstate took the requisite steps to comply with its obligation to preserve documents relevant to this litigation. As a matter of law, Plaintiffs are entitled to this information. *See, e.g., In re Hitachi Television Optical Block Cases*, No. 08cv1746 DMS, 2011 U.S. Dist. LEXIS 90882, at *11 (S.D. Cal. Aug. 12, 2011) (discussing granting of plaintiffs' Rule 30(b)(6) motion to produce witness to testify about company policies regarding preservation and production of electronic data); *Cannata v. Wyndham Worldwide Corp.*, No. 2:10-cv-00068-PMP-LRL, 2011 WL 3495987, at *3-4 (D. Nev. Aug. 10, 2011) (denying defendants' motion for protective order to prevent taking of Rule 30(b)(6) deposition concerning, among other issues, collection and preservation of ESI and efforts to comply with litigation hold); *In re Intel Corp. Microprocessor Antitrust Litig.*, 2009 U.S. Dist. LEXIS 8310, at *6-7 (D. Del. Jan. 22, 2009) (ordering discovery into preservation of electronic evidence); *In re eBay Seller Antitrust Litig.*, No. C07-1882JF, 2007 WL 2852364, at *1-2 (N.D. Cal. Oct. 2, 2007) (permitting discovery of “retention and collection efforts” of electronically-stored information); *Doe v. District of Columbia*, 230 F.R.D. 47, 55-56 (D.D.C. 2005) (compelling deposition testimony on “process used to collect the documents that have been produced or will be produced . . . in response to plaintiff's requests for production of documents”) (internal quotations omitted).

In anticipation of this litigation, Allstate should have preserved its documents about the Program. To know whether Allstate has preserved such documents, Plaintiffs are entitled to deposition testimony about Allstate's collection and preservation practices, including the computers that were used to create information about the Program (Topic No. 37), the existence of Program-related documents that were created by the parties' agreed-upon custodians (Topic No. 38), the steps taken to search for and preserve Program-related documents (Topic 42), and the content and identity of any Program-related documents that have not been preserved (Topic No. 44). Indeed, Allstate has not challenged Plaintiffs' general right to obtain deposition testimony on preservation and collection efforts for relevant documents, and the evidence to date suggests that Allstate has failed to comply with its preservation obligations. (*See* Pls. RFA Motion, Doc. No. 269, at 17-20). Accordingly, Plaintiffs are entitled to the preservation-related testimony they seek.

Finally, despite failing to analyze a single Topic to show how or why it is improper, Allstate makes the conclusory assertion that Plaintiffs' Rule 30(b)(6) Notice "leaves no discovery off the table . . ." (Def. Br., Doc. No. 273, at 6). This is a gross exaggeration. Even a cursory review of Plaintiffs' Rule 30(b)(6) Notice confirms that, as described above, Plaintiffs are requesting deposition testimony on targeted Topics, each of which is crafted to seek information relevant to establishing Plaintiffs' challenges to the Release and Allstate's failure to comply with its preservation obligations. That some of this information relates to the Program does not mean that Plaintiffs are seeking full case-related discovery at this juncture or that the information Plaintiffs in fact seek is unrelated to the unenforceability or invalidity of the Release. Accordingly, Allstate's motion should be denied.

b. This Court Has Expressly Authorized Plaintiffs To Seek Discovery Of Information Sought By Plaintiffs In Their Rule 30(b)(6) Notice.

Allstate next contends that Plaintiffs' Rule 30(b)(6) Notice is improper because it violates the Court's October 21, 2010 Order by seeking "to unilaterally expand the boundaries of discovery by changing the scope of what is sought under the hook of its 'part and parcel' theory." (Def. Br., Doc. No. 273, at 12). Allstate, however, appears to misread the Court's Order. Rather than prohibiting discovery into the "part and parcel" theory, the Court's Order expressly authorized it.

Omitting relevant passages, Allstate contends that the Court bifurcated discovery as to the "part and parcel" theory. According to Allstate's tortured reading, "[o]nly in the event the Court finds 'that the part and parcel doctrine is applicable to this case' will the parties reach the *second stage* of 'part and parcel' discovery"—during which Plaintiffs can discover information that would "prove its underlying claims of an illegal scheme." (See Def. Br., Doc. No. 273, at 12) (emphasis added).

This is the *complete opposite* of what this Court held. The Court first recognized that Allstate failed to read the Third Circuit's mandate "in context" and that the Third Circuit "unequivocally stated that 'plaintiffs are entitled to discovery [on the issue of whether] the releases were part of an illegal scheme.'" (Oct. 21, 2010 Mem. Op., Doc. No. 236, at 8). The Court then concluded that "*nothing* in [this Court's April 2010 Case Management Order] *can remotely be construed as limiting or precluding Plaintiffs' ability to take discovery* on its 'part and parcel' theory at this stage of the litigation." (*Id.* at 8-9) (emphasis added).

In fact, the very passage quoted in Allstate's motion confirms this reading. When read in context, the Court's October 21, 2010 Order clearly authorizes Plaintiffs to obtain discovery related to its "part and parcel" theory:

[T]he [CMO] 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.

(*Id.* at 9). Thus, the Court expressly held that in light of the Third Circuit’s opinion and the CMO, Plaintiffs are fully “entitled” to take discovery—at this juncture—to prove their “part and parcel” theory. (*Id.*, at 8).

This Court’s October 21, 2010 Order could not be clearer. In order to show that the Release was part of an illegal scheme (the Program), Plaintiffs must be able to depose Allstate’s corporate representative(s) on information related to the Program itself. Accordingly, Plaintiffs’ Rule 30(b)(6) Notice is not overbroad for seeking this information.⁹

c. Plaintiffs Have Continuously Requested Information Related To The Program And Are Entitled To This Information.

Lastly, Allstate argues that Plaintiffs are not entitled to depose Allstate’s corporate representative(s) on information related to the Program because this would be “a complete about-face from the scope of discovery Plaintiffs previously advanced” in document requests that Plaintiffs served more than one year ago. (Def. Br., Doc. No. 273, at 10). This is a red herring.

As a matter of law, Plaintiffs did not limit their right to obtain critical deposition testimony by virtue of document requests served in March 2010, even if those requests were as

⁹ Notably, this is not the first time that Allstate has taken a direction from the Court in this case out of context in an effort to prevent Plaintiffs from discovery relating to their “part and parcel” theory. (Oct. 21, 2010 Op., Doc. No. 236, at 8) (“Although Defendants cite to the last sentence of the above paragraph for the proposition that the Third Circuit did not preclude Allstate from objecting to discovery on the grounds that the ‘part and parcel’ doctrine has no legal applicability to this case, this argument fails to read the entire opinion in context.”) *Id.* (citation omitted). Allstate’s selective reading of this Court’s prior decisions is unavailing and the Court should deny Allstate’s motion for a protective order.

limited as Allstate now suggests. Simply because Plaintiffs did not seek every document related to its “part and parcel” theory as part of its March 2010 document requests does not mean that Plaintiffs are not entitled to seek clearly relevant information related to the Program as part of their Rule 30(b)(6) Notice—so that Plaintiffs can seek and/or defend against summary judgment. Not surprisingly, Allstate offers no legal support for its position.¹⁰

In fact, since the Third Circuit’s mandate, Plaintiffs have continuously requested information related to the Program in connection with its challenges to the Release. For instance, several of Plaintiffs’ Interrogatories have expressly sought information about the Program, including:

- the identity of the persons most knowledgeable about the “creation, design, and structure of the Mass Termination Program” (Pls. First Set Of Interrogs., Doc. No. 262-4, at No. 1(a));
- the identity of each individual who was responsible for “creating, designing, and structuring the Mass Termination Program” (*Id.* at No. 2(a));
- all databases, files, and documents that concern the “creation, design, and structure of the Mass Termination Program” (*Id.* at No. 3(a)); and
- when Allstate reasonably anticipated litigation concerning the Mass Termination Program and all steps taken to preserve documents since that date (*Id.* at No. 13).

Allstate has answered *each* of these Interrogatories. (*See* Allstate Answers To Pls. Interrogs., Doc. No. 262-5 attached as Ex. B to Pls. Mot. to Compel).

¹⁰ Moreover, Allstate relies upon a truncated quote from Plaintiffs’ General Instructions. (Def. Br., Doc. No. 273, at 10). Allstate fails to recognize that Plaintiffs merely refrained from asking for certain documents related to the part and parcel theory “*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.*” (Pls. Doc. Req., Doc. No. 273-11, attached as Ex. 8 to Def. Br., at 2-3) (emphasis added). Allstate has made this request, and, in its October 21, 2010 Order, the Court held that Plaintiffs nonetheless were entitled to documents concerning its part and parcel theory at this juncture. (Oct. 21, 2010 Mem. Op., Doc. No. 236, at 7-9). Accordingly, the language of Plaintiffs’ March 2010 document requests fails to support Allstate’s current motion.

Finally, Allstate itself has repeatedly acknowledged that discovery concerning the Program is appropriate at this juncture. By way of example only, Allstate’s Third Set of Interrogatories asks each Plaintiff to “identify all Documents related to the allegations at issue in this litigation, including all Documents concerning the Preparing for the Future Group Reorganization Program and/or the Release” (Allstate’s Third Set of Interrogs., Doc. No. 268-11, at Interrog. No. 10). They also request that Plaintiffs identify each document that “concern[s] . . . the implementation of the Preparing for the Future Group Reorganization Program and/or the Release.” (*Id.* at No. 11). Accordingly, Allstate itself has recognized that information related to the Program is relevant—indeed, that certain information related to the validity of the Release necessarily requires discovery of information related to the Program.

B. Allstate Has Not Met Its Burden To Establish That A Stay Should Be Entered.

In its proposed Order (but not in its Motion), Allstate requests that this Court stay depositions until either Plaintiffs limit the scope of their Rule 30(b)(6) Notice or the Court “provides further direction as to the scope of the Release-related discovery.” (Def. Pr. Order, Doc. No. 273-1, at 2). Allstate is not entitled to this extraordinary relief.

To obtain the “extraordinary remedy” of a stay, *In re Blood Reagents Antitrust Litig.*, 756 F. Supp. 2d 623, 635-36 (E.D. Pa. 2010), the moving party bears the heavy burden of demonstrating “good cause” for such relief. *Coyle v. Hornell Brewing Co.*, No. 08-2797, 2009 WL 1652399, at *3 (D.N.J. June 9, 2009); *see also Ullman v. Express Scripts, Inc.*, No. 06-3065, 2010 WL 421094, at *4 (D.N.J. Feb. 2, 2010) (“It is the party seeking the stay that bears the burden of proof.”). As the Supreme Court has held, the party seeking a stay “must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair

possibility that the stay . . . will work damage to some one else.” *Landis v. No. Am. Co.*, 299 U.S. 248, 255 (1936).

Allstate’s motion says nothing in support of a stay. Allstate does not address the standard for a stay, it does not state why it can meet this standard, and it puts forward no evidence in favor of a stay. This case has been going on for ten years, and there is simply no reason why Plaintiffs should face any additional delay in getting critical deposition testimony in support of their challenges to the Release. Accordingly, Allstate’s unsupported request for a stay should be summarily rejected.

C. Allstate Is Not Entitled To File Yet Another Protective Order At A Later Date That Challenges Plaintiffs’ Rule 30(b)(6) Notice.

Most desperately, Allstate suggests that it may file another protective order, at some point in the future, to address additional issues regarding Plaintiffs’ Rule 30(b)(6) Notice. (Def. Br., Doc. No. 273, at 3 n.1). This is improper.

It is well-settled that courts heavily disfavor piecemeal discovery motions that seek the same relief. *See, e.g., Tilcon Minerals, Inc. v. Orange Rockland Utils, Inc.*, 851 F. Supp. 529, 531 (S.D.N.Y. 1994) (“piecemeal motions are not favored under the Federal Rules of Civil Procedure.”). Indeed, Rule 1 provides that the Federal Rules “should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.” Fed. R. Civ. P. 1. Thus, because a “series of piecemeal [motions] would waste resources of both the parties and the court, contrary to the objectives’ of Rule 1,” they are improper. *IBM Corp. v. Johnson*, No. 09CIV4826, 2009 U.S. Dist. LEXIS 66851, at *7 (S.D.N.Y. July 30, 2009) (quoting *Tilcon*, 851 F. Supp. at 531).

Applying this rule, Allstate is not entitled to reserve objections that it did not raise, address, and support in this instant motion. Allstate should not be given an open invitation to

take a second bite at the apple in the event that this Court denies its current motion for a protective order, particularly when Allstate knew of its intended objection at the time of filing its motion for a protective order yet decided not to raise it. *See, cf. IBM Corp.*, 2009 U.S. Dist. LEXIS 66851, at *6 (stating “[t]he Court shall not allow [plaintiff] to litigate this matter through piecemeal, seriatim motions requesting the same relief, especially when the information that is the basis for the successive motion was in [plaintiff’s] possession at the time of the filing of its first motion for preliminary injunction.”).

Allstate made the decision to file this motion without continuing to meet and confer with Plaintiffs, and it should be bound by that decision. Accordingly, Allstate should not be permitted to file piecemeal motions for a protective order in an attempt to further delay Plaintiffs’ Rule 30(b)(6) deposition—and the critical testimony to which Plaintiffs are entitled.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Allstate’s motion and order Allstate to identify and produce corporate representative(s) to testify as to each Topic in Plaintiffs’ Rule 30(b)(6) Notice within 20 days, or in such other amount of time as agreed to by the parties.

Dated: November 23, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2011, a true and correct copy of Plaintiffs' Memorandum of Law in Support of Plaintiffs' Opposition to Allstate's Motion for a Protective Order Concerning Plaintiffs' Notice of Videotaped Deposition of Defendants Allstate Insurance Company and the Allstate Corporation Pursuant to Rule 30(b)(6), was served via ECF on all counsel of record.

Date: November 23, 2011

/s/ Brian M. Ercole

Brian M. Ercole