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

GENE R. ROMERO, et al.,	:	TABOR INTERVENORS CIVIL ACTION NO: 15-2602
Plaintiffs	:	
v.	:	CONSOLIDATED WITH: NO. 01-CV-3894
ALLSTATE INSURANCE COMPANY, et al.,	:	
Defendants.	:	

PROPOSED FIRST AMENDED COMPLAINT OF TABOR INTERVENORS

NOW COMES PLAINTIFFS INTERVENORS, RODNEY TABOR, PHILLIP ANDERSON, JUDI ALLEN, FREDA SANFORD, KAREN EMMERT, GARY NEWSOM, CHRIS ROGERS, ISABELL HUIE, JOHN SIMERLY, and MICHAEL SIMERLY by and through their undersigned counsel, and avers as follows:

INTRODUCTION

1. **Related Action.** This case is a "related action" to longstanding litigation in this District: *Romero, et. al. v. Allstate Ins. Co., et. al.* Civ. No. 01-3894 (E.D. Pa.)("*Romero I*") and *Romero, et. al. v. Allstate Ins. Co., et al.* Civ. No. 01-6764 (E.D. Pa.)(*"Romero II"*). These are collectively referred to as *Romero.* On or about January 6, 2015, the Court in *Romero*, Hon. Judge Buckwalter presiding, ruled that putative class members must invalidate a Release of legal claims before they may seek to participate in a class action for substantive relief. Accordingly, these Plaintiffs ("Tabor Plaintiffs") bring this action for the purpose of (1) invalidating the Releases signed; and (2) to preserve their rights and claims to substantive relief under common

law, ADEA, and breach of contract, including, as applicable, their ability to participate with any *Romero* class that may be certified.

2. **Background.** Allstate Insurance Company and its parent, The Allstate Corporation (referred to collectively herein as "Allstate"), terminated the employment contracts of thousands of its insurance sales agents in 2000. Euphemistically referred to as the "Preparing for the Future" program, Allstate and its then-President and Chief Executive Officer, Edward M. Liddy forced these employee agents to relinquish their rights under their contracts (known as R830 or R1500 contracts) and convert to purported independent contractor status under Allstate's non-negotiable terms.

3. **"Sign the Release or Face Likely Financial Ruin."** The employee agents were issued an ultimatum by Allstate: If they did <u>not</u> sign a General Release and Waiver Agreement ("Release"), then they would be ousted from selling Allstate insurance entirely. These employee agents had developed this business for many years and Allstate had demanded exclusivity of service. If they did <u>not</u> sign the Release, they also would not be able to sell the book of business they had developed through many years of work. In other words, if the employee agents did not sign the Release, then Allstate would confiscate their business and sever all ties.

4. Facing such financial ruin, a "Hobson's choice," Plaintiffs, like virtually all of the other employee agents subjected to the "Preparing for the Future" program, signed the Release—not voluntarily, but involuntarily under the totality of circumstances which include unconscionable terms.

5. The public face of the "Preparing for the Future" program, by Allstate, was to promote "productivity," "entrepreneurial freedom," and "re-energize" its sales force, as well as to eliminate complexity. But in truth, the driving motivation was money: Allstate was

effectively robbing its employee agents of their pension and other benefits by converting them to so-called independent contractor status, and pocketing the substantial savings. The savings were indeed substantial, as "Preparing for the Future" was designed to save $325 million in annual expenses, a significant portion coming from eliminating pension, profit sharing and other benefits to the employee agents. To ensure that the employee agents would not be able to reacquire their pension and other benefits by obtaining reemployment in another capacity, Allstated imposed a moratorium on rehiring employee agents subject to the "Preparing for the Future" program regardless of their qualifications.

6. Moreover, Allstate's "Preparing for the Future" program replaced employee agents (those who enjoyed the R830 and R1500 contracts) with younger hires. Allstate viewed these persons in stereotypically negative and ageist fashion: too old, lacking energy, lacking drive, lacking initiative, lacking entrepreneurial spirit, and bad for the morale of younger agents.

7. In severing the employment contracts of about 6,200 employee agents, including Plaintiffs, to deprive them of benefits under the Plans and purge hundreds of older workers from the ranks of its sales force, Allstate acted in blatant violation of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 621 *et seq.* ("ADEA") and the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001 *et seq.* ("ERISA"), and as well as its myriad contractual and fiduciary obligations.

8. As a result, Plaintiffs have experienced substantial economic losses as well as emotional and financial hardship.

PARTIES

A. PLAINTIFFS

9. Each of the plaintiffs in this action was employed by Allstate as of November 1, 1999, under an "R830 Allstate Agent Compensation Agreement" ("R830 contract") or an "R1500 Agent Employment Agreement" ("R1500 contract"). Each had his/her employment terminated by Allstate as part of the Preparing for the Future Program. The Plaintiffs who were employed under the R830 contract and R1500 contract are referred to herein as "R830 plaintiffs" and "R1500 plaintiffs," respectively.

10. All of the plaintiffs in this action, with the exception of Karen Emmert, Phillip Anderson, Judi Allen, Chris Rogers, and Michael Simerly had attained the age of forty (40) prior to the termination of their employment contracts, and Emmert was only one day from turning (40). Plaintiffs age 40 or older are collectively referred to herein as the "ADEA Plaintiffs."

11. At all times pertinent hereto, each of the Plaintiffs was an "employee" of Allstate within the meaning of 29 U.S.C. §1002(6) and a vested "participant" in and/or "beneficiary" of the Agents Pension Plan within the meaning of 29 U.S.C. §1002(7) and (8).

12. As an integral part of the Program, Allstate presented Plaintiffs (along with substantially all of its employee agents in the United States) with the Release and instructed that the company would sever their employment and agency relationship entirely on or before June 30, 2000, if they did not sign and return it. Allstate further instructed that employee agents who signed the Release could select from three so-called "options," two of which required the agent to convert to "Exclusive Agent independent contractor" status by entering into an "R3001S Allstate Exclusive Agent Agreement" or "R3001C Allstate Exclusive Agency Agreement" (the "R3001S contract").

13. Employee agents who did not sign the Release were instructed they only would be eligible to receive "base" severance payments (under the Agent Transition Severance Plan), based on the number of years of service provided to Allstate (up to a maximum of 13 weeks' pay) paid out in six (6) equal monthly installments.

14. All administrative prerequisites for maintaining plaintiffs' ADEA claims have been met. Hundreds of Allstate employees put Allstate on notice of allegations of class-wide age discrimination and/or retaliation by filing timely charges with the EEOC and/or equivalent state agencies. Indeed, in *Romero*, Allstate agents filed a putative class under the ADEA, following administrative exhaustion with the EEOC. As a result of the charge(s), Defendant received sufficient notice and an opportunity to eliminate unlawful practices through conciliation or other means. Further, any further efforts to exhaust administrative remedies would have been futile because the decision to terminate each employee agent was an integral part of a company-wide program authorized at the highest level of Allstate's management, including Richard (Rick) Cohen, the President of Allstate Property and Casualty Insurance Company, and defendant Edward M. Liddy. Moreover, Allstate refused to resolve the issues raised by agent employees who timely filed charges.

15. Upon termination of his or her employment contract through the Program, each of the Plaintiffs either continued to provide compensated service to Allstate as a so-called "Exclusive Agent independent contractor." They selected either a "Forced Conversion Option" ("Converted Plaintiffs") or retired from service of Allstate under a "Forced Sale or Forced Severance" ("Retired Plaintiffs"). Those Converted Plaintiffs and Retired Plaintiffs who had less than twenty (20) years of continuous service as employees at the time their R830 or $1500

contract was terminated under the Program are collectively referred to herein as "ERISA Converted Agent Plaintiffs" and "ERISA Retired Agent Plaintiffs," respectively.

16. The Plaintiffs who were under age 55 as of December 31, 1991, are collectively referred to herein as the "ERISA §204(g)(2) Plaintiffs." Administrative remedies have been pursued by many former employee agents of Allstate (without success) and, additionally, efforts by these Plaintiffs would be futile in view of the fact that in each case, the decision to deny such pension benefits was a policy decision authorized at the highest level of Allstate's management and was the product of careful planning and deliberation.

17. Allstate made its agents participants in the Agents Pension Plan after one year of service and they became fully vested after five years. Any individual having at least twenty years continuous service was eligible for early retirement benefits at age 55, plus the amount was "beefed up" to create further incentive for early retirement. However, Allstate would phase out the "beef-up" and alter the eligibility requirements for obtaining early retirement benefits, thereby violating the Employee Income Security Act of 1974, as amended (ERISA), 29 U.S.C. §§1001 et. seq., and, in particular, ERISA Section 204(g)(2), which prohibits any plan amendment that has the effect of "cutting back" on early retirement benefits or subsidies.

18. Plaintiff RODNEY TABOR ("Tabor") was employed by Allstate under an R830 contract. He worked over twenty years (approximately 28) for Allstate. Tabor signed the Release and left the service of Allstate under the Forced Conversion Option.

19. Plaintiff KAREN EMMERT ("Emmert") was employed by Allstate under an R1500 contract. She worked over thirteen years for Allstate. Emmert signed the Release and left the service of Allstate under the Forced Conversion Option.

20. Plaintiff PHILLIP ANDERSON ("Anderson") was employed by Allstate under an R830 contract. He worked over fifteen years (approximately 16) for Allstate. Anderson signed the Release and left the service of Allstate under the Forced Sale Option.

21. Plaintiff JUDI ALLEN ("Allen") was employed by Allstate under an R1500 contract. She worked over twenty years (approximately 21) for Allstate. Allen signed the Release and left the service of Allstate under the Forced Sale Option.

22. Plaintiff FREDA SANFORD ("Sanford") was employed by Allstate under an R1500 contract. She worked approximately fifteen years for Allstate. Sanford signed the Release and left the service of Allstate under the Forced Sale Option.

23. Plaintiff GARY NEWSOM ("Newsom") was employed by Allstate under an R1500 contract. He worked over twenty years (approximately 23) for Allstate. Newsom signed the Release and left the service of Allstate.

24. Plaintiff ISABELL HUIE ("Huie") was employed by Allstate under an R1500 contract. She worked over twenty years for Allstate. Huie signed the Release and left the service of Allstate under the Forced Conversion Option.

25. Plaintiff CHRIS ROGERS ("Rogers") was employed by Allstate under an R1500 contract. He worked over 24 years for Allstate. Rogers signed the Release and left the service of Allstate under the Forced Conversion Option.

26. Plaintiff JOHN SIMERLY ("J. Simerly") was employed by Allstate under an R830 contract. He worked over 15 years for Allstate. J. Simerly signed the Release and left the service of Allstate.

27. Plaintiff MICHAEL SIMERLY ("M. Simerly") was employed by Allstate under an R1500 contract. He worked over 16 years for Allstate. M. Simerly signed the Release and left the service of Allstate under the Forced Conversion Option.

B. DEFENDANTS

28. Defendant EDWARD M. LIDDY ("Liddy") is being sued in his capacity as the former President, Chief Executive Officer and Chairman of Allstate (and one or more of its subsidiaries and affiliates). Liddy served as Allstate's Chief Operating Officer from August 1994 to January 1999; Chief Executive Officer from January 1999 to May 2005; and as Chairman of the Board of Directors from January 1999 to April 2008. Defendant Liddy is a "person" within the meaning of ERISA, including 29 U.S.C. § 1140.

29. Defendant THE ALLSTATE CORPORATION is a publicly-traded Delaware corporation, having its principal place of business in Northbrook, Illinois. The Allstate Corporation conducts business throughout the United States and abroad through its various subsidiaries and affiliates, particularly including Pennsylvania.

30. Defendant ALLSTATE INSURANCE COMPANY is an Illinois corporation, having its principal place of business in Northbrook, Illinois. Allstate Insurance Company conducts business throughout the United States and abroad, whether through an affiliate or subsidiary or otherwise. Allstate Insurance Company is a wholly-owned subsidiary of The Allstate Corporation and/or one or more of its subsidiaries and affiliates.

JURISDICTION AND VENUE

31. This is a civil action over which original jurisdiction is vested in this Court by 28 U.S.C. §§ 1331 and 1343(a), and 29 U.S.C. § 626(f)(3). This Court also is vested with exclusive

subject matter jurisdiction over plaintiffs' claims under ERISA pursuant to 29 U.S.C. § 1132(e)(1) and (f). Additionally, this Court has diversity of citizenship jurisdiction as the parties are citizens of different states, with an amount in controversy exceeding $75,000. 28 U.S.C. §1332.

32. Defendants, Allstate Insurance Company and Allstate Insurance Corporation, regularly sell insurance products within Pennsylvania, regularly conduct insurance business within Pennsylvania, regularly advertise within Pennsylvania, regularly employ agents within Pennsylvania, and maintain an agent for service of process in Pennsylvania. Allstate Insurance Company and Allstate Insurance Corporation are "at home" in Pennsylvania. Indeed, they advise the citizens of Pennsylvania: "From Abington to Zelienople, our Allstate agents are peppered across Pennsylvania with offices that are fixtures in the communities they serve. That's true in the chocolate hub of Hershey, across the beautiful Lehigh Valley and in each of Pittsburgh's neighborhoods." http://agents.allstate.com/usa/pa. In Philadelphia, alone, dozens of Allstate agents serve the public. Moreover, Allstate Insurance Company is believed to have 448 agencies statewide and, as of 2013, opted to add 305 new insurance agents in Pennsylvania. http://www.bizjournals.com/philadelphia/news/2013/09/25/ allstate-to-double-pa-agency-hires-in.html. Defendants are a "person" within the meaning of ERISA, including 29 U.S.C. § 1140.

33. At all times relevant hereto, Allstate Insurance Company and The Allstate Corporation were an "employer" within the meaning of the ADEA and ERISA because they were engaged in an industry affecting commerce that had twenty (20) or more employees. Allstate Insurance Company and The Allstate Corporation constituted a "single employer" of the plaintiffs and other similarly-situated persons. Among other things, the operations of Allstate Insurance Company and The Allstate Corporation are interrelated and they share common

directors, officers and personnel. The Allstate Corporation was directly and integrally involved in, and exercised *de facto* control over, among other things, financing decisions, funding and personnel, culminating in the decisions at issue in this case. Allstate Insurance Company is identified as the sponsor of the Agents Pension Plan (the "Pension Plan") and The Allstate Corporation is identified as the sponsor of The Savings and Profit Sharing Fund of Allstate Employees (the "Profit Sharing Plan"). Additionally, The Allstate Corporation made sure employees of its subsidiaries and affiliates, including Allstate Insurance Company (collectively, the "Allstate Controlled Group"), were eligible to participate in the Pension Plan, the Profit Sharing Plan and some or all of the other Plans.

FACTUAL ALLEGATIONS

34. **The R830 Contract.** Prior to October 1984, almost all of Allstate's insurance agents had been employed under the R830 contract. This contract expressly created an "employer-employee" relationship between Allstate and the insurance sales agents hired under it and made those employee agents "captive agents" of Allstate: they were required to devote their entire business time to the sale of Allstate's insurance and financial products and prohibited from selling insurance and financial products on behalf of competing companies. These agents were compensated principally through commissions both on any new business they generated and on the renewal of existing business, including a commission-based "production allowance" for vacation, personal holidays, family and other illness, attending company meetings and other time away from their agencies. Additionally, Allstate provided these employee agents with a furnished office or other sales location from which they could solicit and service their "books of

business" and covered standard expenses for the agent to conduct his or her business on behalf of the company.

35. In recognition of the substantial amount of time and resources required for agents to build up a profitable "book of business," the R830 contract created an express and implied relationship in which agents were afforded both substantive and procedural protections to ensure that they could be terminated only for "good cause" and in limited circumstances. Accordingly, the R830 contract specified "unsatisfactory work" as the sole basis upon which an agent could be terminated and further provided that, prior to any termination (other than a criminal act or an act of dishonesty such as embezzlement or fraud), the agent was to be given notice that his or her "job is in jeopardy" and a "reasonable opportunity to bring . . . performance up to satisfactory standards." In any event, Allstate still could not terminate the R830 contract unless it complied with a specified, elaborate review and approval procedure.

36. Apart from the protections afforded to agents from termination, the R830 contract also protected agents from having their commissions reduced or from otherwise being burdened with more onerous terms and conditions of employment by providing its terms could not be modified without the agent's written consent.

37. Though the commission rates fixed by the R830 contract generally were lower than those paid by Allstate's competitors, Allstate enticed prospective agents into committing their futures to the company by promising them a "guaranteed income" and long-term "financial security" through a "superior" package of employee benefits that Allstate touted as the best the industry had to offer. These benefits included, among others, normal and "beefed up" early retirement benefits available under the Pension Plan, the deferral of income and contributions

through the Profit Sharing Plan, and such things as comprehensive medical insurance, dental insurance, long-term disability insurance, and life insurance under other of the Plans.

38. Participation in the Pension Plan was mandatory and automatic on the part of all full-time employee agents. Thus, upon vesting, any employee agent who retired from the service of Allstate on or after age 63 was entitled to receive a "normal" retirement benefit based on the annual eligible compensation earned by the agent. An agent who separate from service with at least twenty (20) years of "Credited Service" was entitled to commence retirement benefits as early as age 55. The Pension Plan expressly provided that "[a]ll service" with Allstate "shall count as Credited Service."

39. One of the most attractive features of the Pension Plan, however, was the "early retirement" benefit and subsidy available to agents who retire in accordance with Allstate's early retirement policy[1] before age 63 with at least twenty (20) years of "continuous service" with the company. In addition to being able to commence retirement benefits as early as age 55, these including the amount of compensation that the agent would have earned (based on the amount earned in the calendar year preceding retirement) if he or she had worked until age 63. Thus, for instance, if an agent with twenty (20) years of continuous service retired at age 55, he or she would be eligible for a "beefed-up" early retirement benefit which assumed that he or she continued to work for the next eight years – even though the agent had, in fact, retired and thus would have no earnings from Allstate during those future years.

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[1] Allstate's one-sentence "voluntary early retirement policy" provided as follows:

> An employee who has 20 or more years of continuous service may request early retirement at any time after reaching age 55.

40. **The NOA Program.** By 1984, Allstate was a very profitable insurance company, selling products almost exclusively through its sales force of about 13,000 "captive" employee agents who worked out of booths located in "Sears" retail stores or, in some cases, sales offices owned or leased by the company. Allstate's management nonetheless had concluded that it could increase its profits by cutting the net expense of the "unmatched" compensation package provided to employee agents. As a result, Allstate instituted the Neighborhood Office Agent ("NOA") "cost sharing" program under which employee agents were encouraged to lease or buy offices in their own names from which they could continue to solicit new customers and service their prospering "books of business." Allstate represented to that if one wanted to have "a proprietary interest in a business," "choose your own office site," "select your own clerical help," "have unlimited income potential," and still "have job security," then he/she should become an Allstate NOA. While Allstate publicly asserted the NOA program would provide its employee agents with such greater "entrepreneurial freedom," and promised that employee agents would have a "proprietary interest" in their agencies, the NOA program represented the first in a series of steps that Allstate took to reduce its net expenses at the expense of employee agents.

41. **R1500 Contract.** The NOA "cost sharing" program was implemented, in large part, through the R1500 contract – a form of employment contract which substantially all new employee agents hired subsequent to October 1, 1984, were required to enter into – as well as the standardized R1660 Amendment to the R830 contract (the "NOA amendment"), which Allstate encouraged its existing employee agents to sign. In many respects, the R1500 contract was similar to the discontinued R830 contract. Like the R830 contract, the R1500 contract created an "employer-employee" relationship of indefinite duration between Allstate and its agents,

provided that those agents were to be compensated on a commission basis, and prohibited them from selling insurance and financial products on behalf of any competing company. Furthermore, as acknowledged "employees" of Allstate, agents hired under the R1500 contract – like their R830 counterparts – were entitled to participate in all of the Plans and receive other benefits as Allstate employees. Yet, while it preserved the essential structure of the "employer-employee" relationship between Allstate and its insurance sales agents, the R1500 contract differed from the R830 contract in at least two ways.

42. First, under the R1500 contract (and the NOA amendment), employee agents were obligated to bear the entire expense of operating their own sales offices – generally running into tens of thousands of dollars each year for rent, support staff, marketing, advertising and utilities – whereas prior to October 1984, and under the original R830 contract, Allstate generally had borne all such expenses. Allstate nonetheless provided an "Office Expense Allowance" or "OEA" to agents employed under the R1500 contract (and the NOA amendment) through which the company reimbursed a portion of the out-of-pocket expenditures for which agents were responsible under the NOA program. That allowance was paid in the form of an enhanced commission tied to new and renewal business production during the prior year, but was intentionally designed to only partially offset the substantial expenses associated with running an Allstate agency. Second, even though Allstate proclaimed that the R1500 contract (but not the NOA amendment) was designed to "attract and keep aggressive, new business oriented agents," the new contract purported to reserve for Allstate the unfettered "right to increase or decrease compensation amounts," including the amount of OEA generated by sale commissions; to "change the compensation rules at any time"; to change the "nonexclusive" sales location assigned to an NOA agent at any time (notwithstanding the fact agents were required to live

within "reasonable proximity" to their sales location); and to unilaterally alter its other terms and conditions.

43. The R1500 contract expressly incorporated the provisions of the Agents Employment Procedure Manual (the "Employment Manual") and provided that it was further "governed by the rules, regulations and procedures" set forth in the Employment Manual and elsewhere. Among the provisions contained in the Employment Manual was a requirement that employee agents be given a "complete explanation of the reason for termination" and notification of the right to appeal such termination pursuant to a two-step appeal process. Accordingly, while the R1500 contract purported to make agents "at will" employees, under the express and implied terms of the Employment Manual it incorporated, agents could be terminated only on a case-by-case basis and when warranted by individual circumstances. According to Allstate's Management Information Guide, R1500 agents were subject to the same "corrective procedures as the R830 agent," including the ability "to request an agent review board in the event of termination . . . ." This is consistent with Allstate's acknowledged policy that it would terminate an employee agent only for "good cause" such as serious acts of dishonesty and, in all other cases, it was corporate policy to use "progressive discipline."

44. With the launching of the NOA "cost sharing" program in 1984 and during the years that followed, Allstate publicly assured employee agents working under the R830 contract that they would not be required to participate in the new program. Eventually, however, Allstate began to engage in a sustained effort to pressure its R830 agents to convert to the NOA program, either by executing a new R1500 contract or the NOA amendment. Among other things, Allstate began to evaluate its managers on their ability to get employee agents to convert to the NOA

program and, in the case of managers who were viewed as being "soft on agents," threatened them with termination unless they succeeded in getting agents to convert to the NOA program.

45. When it became clear that Allstate would not be able to lure its remaining R830 agents to convert to the NOA program with false promises of future riches and "entrepreneurial freedom," Allstate resorted to more insidious measures such as scare tactics, threats, intimidation and belittlement. To this end, employees agents were told that they "would not be around long" if they did not agree to convert to the NOA program. In the words of Allstate management, the company was moving in a new direction and agents "could either jump on the bandwagon or fall by the wayside." By 1990, heavy-handed tactics such as these ultimately resulted in the majority of the remaining R830 tying their fates to the NOA program.

46. While the NOA program initially accomplished Allstate's objective of shifting most of the costs associated with the operation of neighborhood sales offices to its employee agents, Allstate still was bearing a substantial amount of costs itself. Moreover, the NOA program had little impact on what had become one of the largest line-item expenses on Allstate's balance sheet: the expense of Allstate's "superior" package of employee benefits, which accounted for as much as 25 percent or more of a typical agent's compensation package.

47. **R3001 NOA Exclusive Agent Program.** In a further effort to phase out these expenses and, thereby, improve its "bottom-line," Allstate introduced a new program which it called the Neighborhood Exclusive Agency ("Exclusive Agent") program in October 1990. Under this Exclusive Agent program, Allstate hired new "Exclusive Agents" as employees for an initial eighteen-month training period, whereupon these newly-minted agents entered into a standardized R3001 Neighborhood Exclusive Agency Agreement ("R3001 contract"), which

characterized them as “independent contractors.” The term “exclusive” is synonymous with “captive” in that the R3001 contract bars Exclusive Agents from soliciting, selling or servicing insurance of any kind for any other company, agent or broker, or referring a prospect to another company, agent or broker, without the prior written approval of Allstate.

48. In addition, Allstate announced that all of its 16,000 or so existing employee agents could participate in the Exclusive Agent program by “converting” to the new R3001 contract and becoming so-called “independent contractors.” Allstate then actively encouraged them to do so by hyping the supposed advantages of that program. Allstate then “upped the ante” by evaluating managers on their success in getting employee agents to convert to the Exclusive Agent program and offered them bonuses based on the number of agents who converted.

49. While Allstate touted the R3001 contract, like the R1500 contract before it, as affording agents yet more “entrepreneurial freedom,” as well as the capacity for unlimited earning potential, in truth its only advantage from the agents’ perspective was a modest increase in commission rates for newly-written policies on certain lines of insurance. These higher rates, however, were at best sufficient to offset the fact that Exclusive Agents operating under the R3001 contract did not receive commission compensation in the form of a “production allowance” and, in the case of the vast number of employee agents in the NOA program, reimbursement of some of out-of-pocket expenses from their OEA. Because the R3001 contract also eliminated all of the benefits to which employee agents were entitled, its net effect was to dramatically reduce the overall compensation Allstate paid to its agents.

50. Not only was the increase in commission rates provided for under the R3001 contract far too small to offset the loss of their employee benefits, OEA and production allowance, that commission rate was not guaranteed, as had been the case under the R830

contract. Further, under the R3001 contract, Allstate retained for itself the absolute discretion to add, eliminate or alter its terms, or to terminate the agreement "at will" – that is, at any time and for any reason, or for no reason at all, upon giving at least ninety (90) days notice. In addition, the R3001 contract did not contain any of the procedural safeguards afforded to employee agents under the R830 and R1500 contracts in the event Allstate decided to terminate the Exclusive Agent.

51. In November 1991 – approximately a year after Allstate introduced the Exclusive Agent program – it sought to amend the Pension Plan by, among other things, changing the definition of the term "Agent," which prior to that time had been defined as "any employee who either is classified as an Agent under the Company's personnel policy or whose principal compensation is paid in the form of commissions pursuant to an agreement with Allstate." As a result of the November 1991 amendments, Allstate deleted the reference to any "employee . . . whose principal compensation is paid in form of commissions pursuant to an agreement with his Employer," and limited the term "Agent" only to an "employee who is classified as an Agent under the Company's human resources policy." In denominating agents working under the R3001 contract as "independent contractors" and in drastically narrowing the number of "Agents" who would be covered by the Pension Plan, Allstate sought to minimize its obligation to make further contributions to the Plan.

52. At the same time that it was using the Exclusive Agent program as a means to reduce expenses associated with the Pension Plan benefits, Allstate also cut back those benefits by phasing out the "beef-up" benefit. Allstate purported to amend the Pension Plan in November 1991 by, among other things, adding a "sunset" provision reducing "beefed-up" benefits for participants who satisfied the eligibility requirements for early retirement

after 1991, and eliminating it entirely for those who satisfied the requirements on or after 1999. Specifically, the Pension Plan purportedly was amended so that the early retirement benefit of an agent entitled to the "beef-up" was calculated as if the agent continued in employment only until the earliest of age 63 or December 31, 1999 (the "Beef-Up Amendment"). The following chart illustrates the manner in which the "beef-up" was to be phased out:

Year of Retirement Number (assuming retirement at year end)	Maximum Years of "Beef Up"
1991	Up to 8 years
1992	Up to 7 years
1993	Up to 6 years
1994	Up to 5 years
1995	Up to 4 years
1996	Up to 3 years
1997	Up to 2 years
1998	1 year
1999 and later	None

Thus, for instance, as a result of the Beef-Up Amendment –

- an eligible "Agent" who retired from the company's service at age 55 in 1996 with 20 or more years of continuous service would be credited with only three (3)--instead of eight (8)—years of "beef up";
- an eligible "Agent" who retired from the company's service at age 55 just two years later in 1998 with 20 or more years of continuous service would be credited with only one year—instead of eight (8) years--of "beef up"; and
- any eligible "Agent" who retired from the company's service at age 55 after December 31, 1999, with 20 or more years of continuous service would not be eligible for any "beef up".

53. The form of notice Allstate provided to participants about the November 1991 amendments to the Pension Plan falsely stated that they were authorized by federal law. In fact, although the Tax Reform Act of 1986 (and the regulations promulgated thereunder) permitted Allstate to adopt certain amendments to the Pension Plan, it did not authorize the company to phase-out and eliminate the "beef-up" for eligible "Agents" electing to take early retirement on or after January 1, 1992.

54. Recognizing that a so-called Exclusive Agent independent contractor provides services to Allstate, since the time Allstate introduced the Exclusive Agent program and began encouraging employee agents to convert, the Administrator treated employee agents' conversion to Exclusive Agent as not resulting in the agent "retiring" from the company's service for Pension Plan purposes. In particular, the Administrator interpreted the otherwise undefined terms "retire" and "retirement" in the Pension Plan as requiring both a termination of employment and a separation from service. The Administrator formally adopted an administrative rule to this effect in 1992. Consistent with that interpretation, under the terms of the Pension Plan, a participant who converted to Exclusive Agent continued earning "service" credit because he was not deemed to be "retiring" from the service of Allstate at the time of conversion.

55. In a subsequent plan amendment, however, Allstate purported to alter the Pension Plan's definition of the term "Credited Service"—which had included all of an "Agent's service" to Allstate—to provide that only "an Agent's <u>employment</u> . . . <u>as an employee</u> shall count as Credited Service" (the "Service Amendment"). (Emphasis added).

In a series of amendments that followed, all of which purported to be effective as of December 1994 (the "December 1994 Amendments") – that is, three years after Allstate first attempted to adopt the November 1991 amendments – the company attempted once again to amend the Pension Plan, including the provisions pertaining to early retirement. In so doing, the Pension Committee not only "readopted" the November 1991 amendments wholesale, but it also purported to do so retroactively to January 1, 1989, adding several new amendments that were intended to make it even more difficult for participants to earn additional retirement benefits, including attaining eligibility for early retirement.

56. One of these amendments took the form of a new "Appendix A" stating that under Allstate's so-called "early retirement policy," any "request of an employee for Voluntary Early Retirement will be denied if," upon termination of the agent's employment contract, he or she enters into an agreement to perform duties or services that are "substantially similar" to those performed as an employee.

57. The manifest purpose of these various amendments was to retroactively deny credit to employee agents who had converted to the R3001 contract for the service they had provided to the company under that contract and thereby prevent these agents from earning additional retirement benefits, including attaining eligibility for early retirement benefits. As set forth above, prior to adopting these amendments, Allstate was obligated to count "all service" with the company – whether as an employee agent under an R830 or R1500 contract or as an "Exclusive Agent" under an R3001 contract – as credited service for purposes of accruing retirement benefits and attaining eligibility for early retirement.

58. In a case brought by a former employee agent alleging, among other things, that Allstate had wrongfully denied "beefed-up" early retirement benefits by not treating their

conversion to Exclusive Agent status under the R3001 contract as a retirement from Allstate, Allstate and the Administrator had taken the position (prior to the December 1994 amendments) that the agent remained "in the service" of Allstate and, hence, conversion to so-called "independent contractor" status under the R3001 contract did not constitute a "retirement" within the meaning of the Pension Plan. As the United States District Court for the Middle District of Florida explained in upholding this interpretation:

> Allstate consistently has defined "retirement" for purposes of applying the Company's voluntary Early Retirement Policy to mean not only that the agent ceases to be an employee, <u>but that he or she also ceases providing any kind of compensated service to Allstate</u>**.** It was this interpretation that led Allstate . . . to take the position that ["employee agents"] who elected to become [exclusive agents] had not "retired" and were not eligible for early retirement benefits under the Plan, i.e**.**, <u>that they were still "in the service" of Allstate</u>.

Scott v. Administrative Committee of the Allstate Agents Pension Plan, 1995 U.S. Dist. LEXIS 20564 at *27 (M.D. Fla. Sept. 15, 1995) (emphasis added), *rev'd on other grounds*, 113 F.3d 1193 (11th Cir. 1997).

59. The Administrator's interpretation and district court's decision in *Scott* are consistent with an Allstate publication entitled "Benefits Bottom Line," wherein the company announced – under the caption "*Exclusive Agents: Defining Retirement*" – its justification for refusing to pay early retirement benefits to employee agents who converted to Exclusive Agent status and continued working for Allstate under the R3001 contract:

> Conversion to Exclusive Agent status does not result in an Agent leaving the service of Allstate. On the contrary, the Agent is continuing to provide the same service to Allstate, and receiving income from the sale of Allstate Products. An Agent's career with Allstate has not terminated merely by converting to the new program, although the legal relationship between the parties has changed.

Similarly, in a 1990 letter, Donald E. Viken, acting as the Administrator of the Pension Plan, advised an employee agent as follows:

> Plan benefit payments are not available until an agent's active working career and income from selling Allstate products has ceased, and thus is no longer in the service of Allstate. . . . An agent's active Allstate working career is not terminated by NEA status; it continues, although the legal relationship changes.

60. Logically, if employee agents who converted to so-called "independent contractor" status under the Exclusive Agent program remained "in the service" of Allstate and if, as the Pension Plan required, all "service" was to be counted, those agents could continue to accumulate service toward eligibility for early retirement benefits after the time of conversion. Accordingly, Allstate understood that it would not be able to achieve the cost savings that it had envisioned unless it further amended the Pension Plan for the purpose of ensuring no agent working under the R3001 contract would be eligible for additional retirement benefits, including early retirement.

61. Apparently recognizing that agents who converted to the R3001 contract were still common law employees and not true independent contractors, Allstate amended the Pension Plan yet again in an effort to deny eligibility for benefits under that plan. In particular, Allstate added a new provision to the Pension Plan in 1996 (the "Employee Definition Amendment") that made "Employee" a defined term and excluded from that term any person who provides services to Allstate under an R3001 contract.

62. While Allstate and the Administrator have failed to treat agents who have converted to the R3001 contract as being "in the service" of the company under the Pension Plan at all times since at least December 1994, those amendments initially affected only the small number of employee agents who had "converted" to the Exclusive Agent program.

63. Throughout the 1990's, Allstate used both inducements and scare tactics in an attempt to convince employee agents (other than so-called "General Agents" who were generally not permitted to convert to the Exclusive Agent program or share an office location with an NOA agent or Exclusive Agent) to sign the R3001 contract, thereby saving Allstate the expense of continuing to provide the employee benefit package to such agents. Despite these repeated efforts by Allstate, only about 150 of the 15,000 employee agents (or one-tenth of one percent) then serving under the R830 and R1500 contracts converted to the Exclusive Agent program between 1990 and 1993. Later efforts likewise were ineffective to convince most employee agents to convert voluntarily. Given the value of the benefits package that would be lost and the long-term income and job security they would be denied upon becoming an Exclusive Agent, the reluctance to do so was predictable.

64. In January 1996, after settling a class action by former NOA agents in California (which asserted that Allstate's failure to reimburse NOAs for all of their actual business expenses violated the California Labor Code), Allstate announced that it had to cease operating an employee agent distribution system in California because of the risk of future liability for unreimbursed (i.e., beyond OEA) business expenses incurred by California employee agents. All of the approximately 1,600 California employee agents were therefore required to choose between continuing in the company's service by converting to the R3001 contract (which did not require the release of any claims against Allstate) or severing their relationship with the company entirely. A large number of these agents entered into the R3001 contract in order to continue in the service of the company and to pursue their careers and livelihoods as insurance agents.

65. During the California conversion, Allstate repeatedly reassured employee

agents operating outside of California that they would not be similarly forced to convert. For instance, in its January/February issue of *Contact*—an Allstate magazine the company distributed to agents nationwide—Vice President of Sales, Chuck Martin, responded to questions about whether Allstate would try to force employee agents in other states to convert to Exclusive Agents by stating: "No. Absolutely not. . . . I know, in particular, that one California agent is trying to drum up fear in any state—'you're next' kind of thing. But that is just simply not true. So no, agents in other states should not be distracted by this. . . ."

66. The following year, in 1997, Allstate considered whether it could force a nationwide conversion of employee agents based on a recommendation made by the Internal Revenue Service ("IRS") during amicable negotiations over the classification of NOA agents after certain NOAs had successfully established in court that they were independent contractor for federal tax purposes. Allstate concluded, however, that it could and would not unilaterally terminate employee agents' contracts to convert them to "independent contractors" for legal and fairness reasons. In particular, Allstate informed the IRS as follows:

> [C]onverting all NOAs to independent contractors would result in a quagmire of litigation and severely disrupt the business activities of Allstate's agents. Such a change would require amending or terminating the NOAs' compensation agreements [i.e., R830/R1500 contract] to reflect independent contractor status. A unilateral change to the compensation/expense reimbursement structure for this agent group would undoubtedly lead to litigation and significantly damage[ ] Allstate's relationship with the agents. . . .
>
> . . .
>
> The NOAs are long-service employees. They have expected to be compensated as employees and receive the fringe benefits that Allstate has traditionally provided. Not only would individuals lose future benefit plan accruals and contributions if they were all converted to independent contractors, many

> of these individuals have spent all of their careers with Allstate and have hoped to retire with retiree life and medical benefits. Ceasing the NOAs' employee service at this juncture in their careers would have severe economic consequences to them.

Romero v. Allstate Ins. Co., Civ. A. Nos. 01–3894, 01–6764, 01–7042, 2014 WL 796005, at *8-9

(E.D. Pa. Feb. 27, 2014) (quoting "Allstate Insurance Company Pre–Submission for June 23, 1997 Meeting").

67. Despite its assurances to employee agents outside of California and its representations to the IRS, in 1997-1998, as part of its "Sales Organization of the Future" initiative ("SOOF")—overseen by a high level steering committee that included senior offices such as defendant Edward M. Liddy (then Chief Operating Office) and Robert (Bob) Gary (then President of Allstate Personal Property and Casualty)—Allstate continued evaluating whether agents should be employees or only so-called Exclusive Agent independent contractors. Allstate recognized that reticent employee agents could not be forced to convert, but it also knew that its employee agent workforce was growing increasingly older, much older than Allstate's general employee population. Allstate ultimately settled on gradually transitioning all agents into the Exclusive Agent program by aggressively incenting employee agents to convert "voluntarily."

68. Allstate therefore embarked on a nationwide effort designed to pressure, intimidate and coerce its remaining employee agents to relinquish the protections, rights and employee benefits to which they were entitled under the R830 or R1500 employment contract by voluntarily converting to the R3001 contract and becoming a so-called "independent contractor." Allstate did so by, among other things, forcing employee agents to accept reduced commissions and thereby forego retirement and other benefits generated

thereby; refusing to provide employee agents with updated computer technology that most Exclusive Agents received; threatening to relocate employee agents to an unsuitable or more distant site such as a warehouse or high-rise building without any signage; threatening to allow an Exclusive Agent to open a nearby office that would be in competition with an employee agent; imposing harassing and burdensome requirements upon employee agents, including requirements that their offices remain open on evenings and weekend; and making false and misleading statements about the financial benefits of the Exclusive Agent program.

69. Between April 1, 1998 and May 31, 1999, Allstate succeeded in getting 1,460 employee agents to convert to the Exclusive Agency program, of which about 622 were employed under the R830 contract, with another 295 employee agents, of which 175 were employed under the R830 contract, electing to leave the service of Allstate by retiring or quitting. Many of these conversions and retirements were precipitated by the introduction of its “Agency Standards” as of January 1, 1999, under which NOA agents or licensed support staff had to be in the office during specified business hours – that is, from 9:00 a.m. to 6:00 p.m. on weekdays and from 9:00 a.m. to 1:00 p.m. on Saturdays. Most solo agents encountered difficulty complying with these new requirements because, among other things, Allstate required them to attend mandatory training sessions and meetings outside of the office during working hours.

70. During this same period, a large number of agents took early retirement or simply left the company, rather than accept the increasingly burdensome working conditions that were being foisted upon them. Significantly, in the case of agents who had, for instance, satisfied the eligibility for early retirement and elected to separate from Allstate in 1998, the Beef-Up Amendment restricted them to credit for only one year of “beefed-up” service.

71. By 1999, Allstate had approximately 15,000 "captive" insurance agents in the United States who principally sold automobile, homeowner and other types of property and casualty (P&C) insurance on behalf of the company, of which approximately 6,200 were still working as employee agents under the R830 and R1500 contracts. The other 8,900 or so agents were Exclusive Agents operating under the R3001 contract or short term employee "trainees" seeking to become Exclusive Agents.

72. Having failed in its decade-long effort to induce its employee agents to surrender their benefits and protections by converting voluntarily to so-called "exclusive agent independent contractor" status, Allstate decided that the time had come to achieve its cost-saving objectives through more coercive measures that were unlawful and otherwise violated the terms of the R830 and R1500 employment contracts. In June 1999, Allstate charged Assistant Vice-President of Sales Barry Hutton with putting a team together to work confidentially on a plan to rid the company of the burdens associated with the aging employee agent workforce, including their employee benefits. By early July, Hutton's "Channel Integration Project" team—which reported to a small group of Allstate officers, including Robert (Bob) Gary and Richard (Rick) Cohen—had developed the Program concept, with the Release as its center-piece, explaining in its presentation that employee agents would not be allowed to "convert, sell BOB [books of business] or receive the Separation Plan without signing a release." *Romero v. Allstate Ins. Co.*, Civ. A. Nos. 01–3894, 01–6764, 01–7042, 2014 WL 796005, at *12-13 (E.D. Pa. Feb. 27, 2014) (quoting July 1999 "Winning in the New Century" Channel Integration Project presentation).

73. Soon after, at the July 12–13, 1999 Allstate Board of Directors meeting, Bob Gary led a discussion concerning the company's strategy for employee agents. During that meeting, Allstate again acknowledged the legal and fairness issues associated with a forced

nationwide conversion of employee agents to the R3001 contract. Specifically, one of the slides presented to the Allstate Board stated as follows:

AGENCY TRANSITION

Wish List	*Realities*
• Agency Reduction in Force Based on Standards	• Not Legally Possible
• Agents All in One Contract	• Legal and Fairness Issues
• Reduce Agent Compensation	• Large Charge to Pension Fund
	• Difficult Move in View of All That is Coming Down

74. Despite the known legal and fairness problems, Allstate continued working on the Program concept through its Channel Integration Project team. By the end of September 1999, Hutton recommended that Allstate approve a program under which employee agents would be required to leave the company unless they converted to the Exclusive Agent program and thereby relinquished their benefits and protections as employees. This recommendation was discussed at the highest levels of Allstate's senior management team and approved by defendant Liddy and Richard (Rick) Cohen in mid to late October 1999.

75. After approving Hutton's recommendation, Allstate's management presented the specifics of the Preparing for the Future Program to the Board of Directors on November 9, 1999. Liddy and Allstate announced the Preparing for the Future Program with great fanfare the next day.

76. Under the Preparing for the Future Program, Allstate told employee agents that it would be "[t]erminating all remaining R830 and R1500 Agreements and all employee agent related programs on June 30, 2000" (with the exception of employee agents located in Montana and New Jersey who, according to Allstate, would be "covered in separate program with

different options available to them") and "[o]ffering all agents the ability to convert to the R3001S Exclusive Agency Agreement."

77. Of the 6,200 or so employee agents who were subject to the Preparing for the Future Program, about 3,200 were employed under the R830 contract as of November 1, 1999, almost all of whom had converted to the NOA program, while the other 3,000 or so had been hired under the R1500 contract as an NOA agent. Allstate additionally provided certain former employee agents who had previously converted to the R3001 contract with the opportunity to leave the service of the company by signing a separate form of release and either selling their entire book of business, including business generated as an employee agent under the R830 or R1500 contracts or, alternatively, receiving an "alternative" termination payment that was essentially equivalent to the "enhanced" severance offered to employee agents subject to the Program.

78. In the case of employee agents working under the R830 and R1500 contracts, Allstate did not in a single case make an individualized determination that "good cause" existed for the termination of any employee agent subject to the Preparing for the Future Program, as required by both forms of employment contract and by Allstate's own policies and procedures. Nor did Allstate follow the approval procedures mandated under the R830 contract or the review and appeal process mandated under both contracts. Indeed, implicitly recognizing that "good cause" could not be shown for its conduct, Allstate exempted from the Preparing for the Future Program employee agents in jurisdictions such as West Virginia whose laws require such a showing for termination of an insurance agent.

79. In a newsletter announcing its "newly revealed" initiatives, Allstate laid bare its motivation for terminating the employment status of its R830 and R1500 agents: Allstate's

"stock performance" was "down more than 20 percent since the beginning of [1999]" and, in the words of CEO Liddy himself, Wall Street was "look[ing] at the property-casualty companies" and was not "lik[ing] the growth prospects." According to Liddy, companies like Allstate had to "scrutinize their expenses more rigorously." Consistent with this requirement, Allstate promised its shareholders that the new initiatives would "reduce Allstate's expenses by some $600 million annually," which it expected to "fully realize beginning in 2001." Allstate also predicted that such savings would amount to 36 cents per share (on a diluted basis) by the end of 2001.

80. Allstate later explained that approximately $325 million of these savings would "come from the field realignment, including the reorganization of the employee agent programs into the [NEA] Program." While Allstate misrepresented the savings associated with the Preparing for the Future Program as administrative savings resulting from the consolidation of multiple agent programs into a single nationwide structure, those supposed administrative savings represented only a minuscule portion of the total. Even ignoring the fact that Allstate continued to employ more than 500 agents under the R830 and R1500 contracts in the United States and Canada subsequent to December 31, 2000, a significant percentage of the projected annual savings resulted from the elimination of Allstate's continuing obligation to provide about half of its agent sales force with an employee benefits package, including contributions to the Pension and Profit Sharing Plans and various government programs such as Social Security, workers' compensation and unemployment.

81. Because of Plaintiffs' ages and/or benefit costs, Allstate instituted the Preparing for the Future Program. With no new hires entering their ranks since 1990, the average age of employee agents had increased steadily throughout the decade. Trying to combat this trend during the 1990s, Allstate had approached some of its most senior and experienced agents and

informed them, for example, that the "unmatched" benefits program provided by the company were not intended to last "forever," that they were "too old" to comply with new sales quotas and other guidelines being imposed by the company, and that they therefore should consider retirement.

82. Despite these efforts, by October 1999, the average age of an employee agent – who comprised 23 percent of Allstate's overall employee workforce – had risen to above 50, with approximately 90 percent of those agents being 40 years of age or older by the time of their termination. Not a single agent was under the age of thirty. In contrast, the average age of all other Allstate employees was about 39, a difference of eleven years.

83. Allstate and its senior management believed that the Preparing for the Future Program would achieve the desired "re-energizing" effect by forcing many older agents – who were stereotypically viewed as lacking "energy," "drive," "initiative" and "entrepreneurial spirit" – to leave the company, either immediately as part of the Preparing for the Future Program or thereafter because of additional the obstacles to continued service that Allstate began to impose in January 1999. Their departures would, Allstate believed, afford the company the opportunity to replace them with younger hires who Allstate believed would be more "energetic" and "productive."

84. Shortly after the announcement of the Preparing for the Future Program, upon information and belief, a "home office" vice president revealed these discriminatory attitudes to a group of employee agents, stating that Allstate expected to lose about 15 to 20 percent of its employee agents – most of whom would be "older" agents who supposedly "would not want to learn" its new system and soon-to-be-implemented computer technologies. In another meeting with employee agents during roughly the same period, upon information and belief, a field vice

president warned that "some of you older agents won't like what's coming down the pike," or words to that effect, and predicted that they would "probably leave." At another meeting with agents, upon information and belief, one of Allstate's regional vice presidents stated that the purpose of the Preparing for the Future Program was to get rid of agents "who are like barnacles on the back of the great blue whale that need to be scraped off." Other agents heard comments by Allstate managers to the effect that the company was "bringing up a new breed" and "getting rid of the fossils" and "dead wood."

85. The R3001S contract, "Agency Standards," and the newly-implemented requirements relating to reimbursement of support staff and rent expenses were specifically designed to create a relationship that was so unattractive to older employee agents that they would not want to convert to the Exclusive Agent program and, if they did, for Allstate to get rid of these agents once they had converted.

86. In fact, more than forty percent of Allstate's employee agents left the company as a result of the Preparing for the Future Program, virtually all of whom were age 40 and older. To replace these older agents and to accomplish its objective of creating a younger and more "energized" sales and workforce, Allstate hired hundreds of new employees – virtually all of whom were under 40 – to fill positions in newly-established sales and customer support roles. One Allstate manager described these new hires as "young and efficient . . . 22 and 23 year olds, straight out of college, full of enthusiasm and with a great future." He stated further that Allstate was using a "new approach" with respect to these "young folks," such as allowing them to play computer games between customers.

87. **Forced "Waiver" of Rights.** Shortly after announcing the Preparing for the Future Program, Allstate began to communicate the details of the Program by means of scripted

presentations and providing affected employee agents with a box containing extensive written materials. The contents of this "job-in-a-box" included the "Preparing for the Future" R830 and R1500 Agent Information Booklet for the Group Reorganization Program, as well as a copy of the Release and certain information that Allstate was required to disclosed pursuant to the Older Workers Benefits Protection Act ("OWBPA").

88. The Release was the linchpin of the Preparing for the Future Program. By its terms, the Release required employee agents 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, connected with, or related to, my employment and/or the termination of my employment and my R830 or R1500 Agent Agreement with Allstate, or my transition to independent contractor status, including, but not limited to . . . any claim for age or other types of discrimination prohibited under the Age Discrimination in Employment Act of 1967, . . . the Employee Retirement Income Security Act . . . or any other federal, state or local law or ordinance or the common law.

89. Upon presenting its employee agents with the Release, Allstate pressured them to sign it and select from one of three mandatory "options," none of which was subject to negotiation:

- the "Forced Conversion Option," under which employee agents would be "allowed" to continue in the service of Allstate as so-called "exclusive agent independent contractors" by entering into the R3001 contract (which was even less attractive than the unattractive option that had been available for nearly a decade under the R3001 contract and which each of them had repeatedly rejected);
- the "Forced Sale Option," under which employee agents would enter into the R3001S contract and leave Allstate by selling their entire book of business to a

buyer approved by Allstate – that is, that is, assuming the agent could find a "qualified" buyer and complete the sale prior to August 1, 2000 (which generally resulted in sales that were far below market in view of the short window in which to locate a buyer and the hurdles that Allstate erected for obtaining approval); and

- the "Forced Severance Option," under which employee agents would leave Allstate in exchange for "enhanced" severance packages equal to the higher of the agent's commission earnings in 1997 of 1998, to be paid in monthly installments over a two-year period.

Alternatively, agents who did not sign the Release would have their employment and agency relationships with Allstate severed entirely on June 30, 2000, and would receive up to thirteen weeks of severance pay, depending on years of service, payable in six monthly installments.

90. Faced with such "Hobson's choices," less than two dozen employee agents refused to sign the Release. Of the overwhelming majority of employee agents who did sign, about 2,600 – or more than forty (40) percent – eventually left the service of Allstate under the Forced Sale or Forced Severance Options, rather than continue working without the "unmatched" benefits package that Allstate had used to lure them into investing their careers and personal financial resources in the first place and upon which they had relied to provide "financial security" after retirement. In many cases, Allstate then contacted its policyholders to advise them that their agent had "retired."

91. The other 4,000 or so agents continued working for Allstate as "exclusive agent independent contractors" under the Forced Conversion Option, even though they were told they would no longer be eligible for Allstate's employee benefits package.

92. Allstate's success in strong-arming and/or inducing through misrepresentations all but a few of its employee agents into signing the Release and either accepting forced conversion or separation from the company's service is not surprising. Those agents had worked as Allstate employees for at least a decade, during which time Allstate aggressively induced most of them to spend many thousands of dollars to build a profitable book of business on behalf of Allstate. At the same time, Allstate barred them, under threat of termination, from pursuing any other business opportunity in the remote event they should ever be terminated. Thus, by November 1999, Plaintiffs—like so many other employee agents—were left so vulnerable to overreaching by Allstate and were under such extreme duress that they succumbed by signing the Release, and/or allowed themselves to be induced by Allstate's representations to sign the Release, in the face of almost certain financial ruin.

93. Since launching the NOA program in 1984, Allstate engaged in an aggressive campaign to pressure its employee agents to heavily invest their financial resources into building a book of business, going so far as to monitor the amount each agent invested. Allstate was strongly motivated to do so. The more money that agents invested in their agencies, the greater was their capacity to solicit new customers and, hence, to generate additional revenues for Allstate. At the same time, by setting the formula for calculating the OEA so as to ensure that generally only a fraction of the actual costs of running a sales office would be reimbursed, Allstate was able to maximize its profit margin on those revenues while shifting most of the risk of loss to its employee agents. As Jerry Choate, Allstate's former President and Chief Executive Officer, stated in explaining the NOA program, "[w]hen the allowance is depleted, the agents dig down into their own pockets" – thus sparing Allstate the expense of digging into its own.

94. Furthermore, Allstate resorted to deception and hyperbole to induce its employee agents to invest their own money on its behalf by telling them, for example, that "there's no limit to your potential income!" and that all agents needed to do to achieve that potential was to hire more and more support staff, thereby enabling them to sell more policies, telling agents "It's as simple as that!" Allstate further assured its employee agents that there was no need for them to worry about the escalating expenses needed to generate additional sales, because for every dollar spent, the company trumpeted that agents would receive "double, triple, quadruple your investment."

95. The expense for which Allstate encouraged its employee agents to make their greatest investment was support staff. Allstate instructed agents that the best way to increase new business production was to "free up" their time by hiring more and more support staff who could take responsibility for servicing existing customers. According to Allstate, the investment in each staff member could normally be recouped in two years or less. In addition, to motivate its managers to reinforce the company's position, Allstate tied the compensation of its managers to the number of staff members hired by the employee agents who were under them; the larger the staff, the larger the manager's bonus.

96. As a result of the intense pressure put on them by Allstate, most employee agents had little choice but to invest tens of thousands of dollars per year from their own pockets and/or other personal resources and, by the time Allstate announced the Preparing for the Future Program in late 1999, had sunk substantial resources into developing a book of business, all in the expectation of recouping such "investments" in the promised form of increased benefits upon retirement. When those agents did not have sufficient liquid resources to cover these increasing

investments, Allstate pressured them to obtain small business loans, mortgage their homes, and borrow against retirement and college savings.

97. At the same time it was encouraging its employee agents to "dig deep into their own pockets" to expand their book of business, Allstate officially maintained that these agents had no ownership or transferable interest in that business (though some agents found ways to transfer interests with Allstate's knowledge and acquiescence). Thus, when employee agents left the service of Allstate, they were generally unable to recoup their investments of time and money by selling their book of business or continuing to receive commissions upon the renewal of policies previously sold. Rather, employee agents had to remain with Allstate until they became eligible for retirement benefits – a minimum of twenty (20) years and until age fifty-five to qualify for early retirement – in order to begin to recoup that investment. Accordingly, for many employee agents subject to the Preparing for the Future Program, refusal to execute the Release meant the certain loss of the substantial investment upon which their financial security was based.

98. Additionally, at the end of 1998, Allstate "upped the ante" by forcing employee agents to sign an "Acknowledgement of Understanding" under threat of termination. Among other things, this document provided that Allstate had the right to control how the agents perform services for Allstate. At the same time, Allstate required employee agents to limit the expenditures for support staff and rent to the amount of their OEA or, if they were unable to do so, to either convert to the Exclusive Agent program or increase the amount of OEA by one or two percentage points, while agreeing to reduce their commissions by a corresponding percentage. These lower commissions would then reduce the retirement benefits that employee agents would be entitled to earn subsequent to January 1, 1999.

99. Not only would employee agents who refused to execute the Release face the loss of the substantial financial investments they had made in building a book of business, they also would be left with virtually no means to pursue their chosen profession as insurance agents and, given the loss of investments in their agencies, little prospect of finding a new one. The employee agents found themselves in this unenviable position because the contracts that governed their relationship with Allstate purported to bar them, under threat of termination, from developing any independent business, and severely restricted their ability to establish any new business in the fields of insurance and financial services for at least a year or two after that relationship ended.

100. Under both the R830 and R1500 contracts, employee agents were required to "devote [their] entire business time" to the performance of their duties as agents and not to engage in any other type of employment, profession or business opportunity without Allstate's consent. In particular, employee agents were absolutely barred from selling insurance or other products of any competing company.

101. Employee agents also were inhibited by restrictive covenants "not to compete" in the event their relationship with Allstate was terminated. Under the R830 contract, employee agents were barred for a period of two years following such termination from "solicit[ing] or sell[ing] insurance of any kind" either: (a) to any person or entity to whom they had previously sold an Allstate policy; or (b) within one mile from any Allstate location from which they had solicited or sold insurance during the two-year period immediately preceding such termination, even though the vast majority of employee agents owned or leased their own offices. The restrictions in the R1500 contract were substantially the same, except that the temporal scope of

those restrictions was limited to one year. In any event, in designing the Agent Transition Severance Plan from which severance payments would be made to former employee agents who left the service of the company as part of the Preparing for the Future Program, Allstate expressly conditioned the payment of such severance benefits on a new two-year "non-solicitation" restriction on soliciting the purchase of products or services in competition with those sold by Allstate to any person who was a customer of Allstate at the time of termination or whose identity was discovered as a result of their status as an Allstate agent, as well as a one-year restriction on soliciting the purchase of such products or services from an office or business site located within one mile of the former agent's Allstate sales location.

102. In the course of explaining the options available to them under the Preparing for the Future Program, Allstate further instructed its employee agents that it "owned" their agency telephone numbers – one of an insurance agent's most valuable business assets – even though employee agents had been required to pay the installation costs and all monthly bills in most cases.

103. Allstate also maintained that an agent's list of customers, including the names and addresses of such customers, was proprietary to the company and strictly confidential. Allstate represented to the agents subject to the Preparing for the Future Program that under the R830 and R1500 contracts, once an employee agent's relationship with the company ceased, any list comprising a book of business must be returned and the employee agent was forever prohibited from initiating contact with any former customer for "any purpose," telling them that it "will treat any attempt by a former agent to contact former customers (or any person whose identity was discovered as a result of his/her status as an Allstate Agent . . .) in whatever form as solicitation." Allstate further warned that it would take "appropriate action" against any

employee agent who used information Allstate deemed confidential or acted in any manner inconsistent with its interpretation of this "non-solicitation" restriction, including notifying the former agent's new company and filing a lawsuit against the former agent and her new company.

Moreover, Allstate designed the severance options under the Program in a manner intended to coerce agents who refused to continue in Allstate's service under the R3001S contract to nevertheless sign the Release. In particular, although the Program operated like a "rearrangement of work" or "reduction in force" (both covered events under Allstate's pre- existing Severance Pay Plan), on the eve of the Program announcement, Allstate self-servingly characterized the Program as a "group reorganization", a type of event that did not trigger benefit entitlements under the Severance Pay Plan. Allstate's intent in belatedly calling the Program a so-called "group reorganization" was to deny terminated employee agents its standard severance of up to fifty-two (52) weeks' pay (depending on completed years of service), usually paid in an immediate lump sum, under Severance Pay Plan, which did not require the release of any claims against Allstate or the assumption of any non-compete obligations or of an eternal prohibition against contacting former Allstate customers for any commercial purpose. Indeed, at the same time that Allstate adopted the Agent Transition Severance Plan for the Program in November 1999, it also purported to amend the Severance Pay Plan to specify that employee agents terminated under the Program were ineligible for benefits thereunder. As a result, employee agents subject to the Program could only receive severance through the Agent Transition Severance Plan, which did not provide for an immediate lump sum payment of severance benefits and imposed on agents who accepted benefits thereunder (<u>including "base" severance</u>) various additional burdens, including: (a) a new two-year non-compete/non-solicitation provision barring the agent from soliciting the purchase of products or services in competition with those sold by Allstate to any person who was a customer of Allstate at the time of termination or whose identity was discovered as a result of their status as an Allstate agent, as well as a one-year restriction on soliciting the purchase of such products or services from an office or business site located within one mile of the former agent's Allstate sales location; and (b) a confidentiality provision purporting to prohibit the agent from ever using the name of, or other information they knew about, their former Allstate customers "for their own benefit or the benefit of others" – even for non-competing commercial purposes.

104. In spite of the termination of their agency appointments and the substantial additional restrictions imposed by the Allstate, under the original terms of the Preparing for the Future Program that Allstate communicated to employee agents, agents who did not sign the Release remained responsible for whatever office lease or mortgage obligations and other financial arrangements that they had entered into in the expectation of continuing their agency relationship with Allstate.

105. The net effect of the numerous and substantial restrictions that Allstate imposed upon its employee agents was to leave them with little, if any, prospect for meaningful employment or self-employment when Allstate terminated their agency appointments and no real, voluntary choice other than to sign the Release. For the past decade or longer, they had been denied the opportunity to sell insurance products on behalf of any competing companies, to earn other income for retirement, or to gain experience in any other line of work. Were they to attempt to reestablish themselves in the insurance business, they would have to start literally from "scratch" and face enormous obstacles as Allstate insisted that they were not permitted to sell insurance products to former customers, would have to relocate from the offices they

themselves leased or owned and would have to surrender their agency telephone number to Allstate. Any such effort to build a new business would be made all the more difficult by virtue of the fact that most of their financial resources were tied up in the investments in their Allstate agencies, investments that they would never see any part of unless they mitigated such loss by signing the Release and accepting one of the three options that Allstate had thrust upon them.

106. **Material Misrepresentations.** At or around the time of the Program, Allstate made numerous misrepresentations or omissions of material fact to Plaintiffs and the other employee agents concerning the consequences of signing or not signing the Release in order to induce them to waive their rights. Among other things, Allstate falsely represented to the employee agents subject to the Program that the confidentiality provision in their soon-to-be terminated R830 and R1500 contracts imposed on them a lifetime ban on contacting former customers for any purpose whatsoever if they left Allstate's service and did not sign the Release. As the Court in *Romero* held, however: "Nothing in the Allstate confidentiality provision could possibly be construed, under any reasonable interpretation, as reaching that far. Yet, this is the representation that Allstate effectively made to its agents." *Romero v. Allstate Ins. Co.*, Civ. A. Nos. 01–3894, 01–6764, 01– 7042, 2014 WL 796005, at *77 (E.D. Pa. Feb. 27, 2014).

107. In addition, Allstate represented to Plaintiffs and the other employee agents who were being terminated that there would be other employment opportunities for them within the company. However, after the deadline for the Release, Allstate formally adopted a rehiring moratorium that changes its standard rehire policy and denied employee agents subject to the Program any re-employment for a one to two year period, regardless of the agents' qualifications. While Allstate terminated certain other non-agent employees in contemporaneous

reductions in force, it did not impose a similar moratorium on their rehire. For those employee agents who left Allstate's service as a result of the Program before completing 20 years of continuous service, the rehire moratorium barred them from ever satisfying that requirement for early retirement benefits.

108. Allstate also made numerous misrepresentations or omission of material fact concerning the Exclusive Agent program and R3001S contract under the Forced Conversion Option. For instance, in widely-distributed communications, and through local managers, Allstate affirmatively reassured the employee agents subject to the Program that there was no ongoing work or plans to reduce the commissions rates paid to Exclusive Agents operating under the R3001 contract. Unbeknownst to Plaintiffs, however, Allstate already had plans in place in 1999 to slash Exclusive Agent commission rates in the near future. And Allstate did, in fact, subsequently slash the commission rates, but it did not announce the change to the agents until 2002.

109. Moreover, while Allstate vaguely informed employee agents that under the Forced Conversion Option, their agency would "be expected to achieve certain business results," it failed to disclose to the employee agents that those "business results" would be production quotas, which Allstate could set (even at unrealistic levels) in its sole discretion and which, if not met, would lead to the termination of the agent. Yet, after the Program, Allstate in fact imposed unrealistic production quotas and terminated many converted agents for failing to meet them. Such use of quotas was directly contrary to how Allstate described the Exclusive Agency Program in seeking a determination from the Internal Revenue Service that exclusive agents operating under the R3001 contract would be independent contractors.

110. Finally, Allstate informed employee agents that they would be independent contractors able to control the means by which they did business. This too was a material misrepresentation. In fact, the R3001S contract gave Allstate the right to control agents, and agents who converted found that Allstate controlled them, in much the same manner as before the Program, as set forth below.

111. Faced with the prospect of financial ruin versus signing a document that purported to waive their statutory and common law rights, many employee agents, attempted to take a third route by filing charges of age discrimination and retaliation with the EEOC. After completing an initial review of these charges, the EEOC informed Allstate, in a letter to CEO Liddy, dated May 2, 2000, of the preliminary determination that the Release was "unlawful." The EEOC further urged Allstate to "suspend[] the waiver requirement" until it was able to complete its investigation.

112. Allstate wrote in response on May 15, 2000, that, among other things, signing the Release does not prevent employee agents "from challenging the validity of the release and pursuing [a] claim of discrimination." Allstate thereafter rebuffed the EEOC by letter dated May 30, 2000. Allstate informed the EEOC that it intended to proceed with the implementation of the Program, including requiring employee agents to execute the Release, despite the EEOC's preliminary determination.

113. By the time of the deadline for executing the Release (which, in most instances, was May 31, 2000), many employee agents had become aware of the EEOC's preliminary determination and Allstate's decision to flaunt that determination.

114. Subsequently, the EEOC issued Letters of Determination dated as of September 19, 2000, affirming its preliminary determination and concluding that Allstate had acted in

violation of the ADEA, the Civil Rights Act of 1964, and the Americans with Disabilities Act of 1990 by expressly conditioning the right of employee agents to convert to so-called "independent contractor" status – and thereby recoup at least a portion of the investments that they had made at the behest of Allstate – on the execution of the Release. Characterizing Allstate's actions as "threats, coercion, and intimidation," the EEOC concluded that refusal to execute the Release constitutes protected activity within the meaning of those federal statutes, and that the Release itself was invalid and unenforceable.

115. **Pretext, and Explanations Contrary to Contractual Protections.** Allstate's proffered reasons for implementing the Program are false, pretextual or contrary to Allstate's contractual obligations. First, in one slide in its November 1999 scripted presentation to agents about the Program, Allstate claimed that the Exclusive Agents had higher productivity than employee agents, suggesting that was one of the justifications for the Program. Allstate's contention that Exclusive Agents were more productive is based on equivocal data: another slide of the same presentation suggests the very opposite. More important, if Allstate did implement the Program for that reason, it violated the contractual provisions that agents had to be offered notice and an opportunity to improve before being terminated for performance reasons.

116. Second, Allstate claimed the Program was implemented to eliminate the complexity of having multiple agent contracts and the associated administrative costs. However, Allstate admittedly continued to have the same number of different agent contracts after the Program. Additionally, the administrative costs were miniscule compared to the hundreds of millions of dollars the company knew it would save in employee benefits, including under the Pension Plan.

117. Third, Allstate attempted to justify the Program on grounds that the Exclusive Agent program was better for its soon-to-be-terminated R830 and R1500 agents because it would afford them "entrepreneurial freedom." It also promised that the R3001 contract would allow them to make more money and afford them freedom from the pervasive control exercised over them as employees, including relieving them of the obligation to attend meetings which had been mandatory for employee agents.

118. Allstate knew better. Converting to Exclusive Agents reduced employee agents' total compensation because, among other things, the agents lost their OEA, production allowance and subsidized employee benefits. Additionally, under the R3001S contract that agents were required to sign as part of the Program, Allstate retained the right to restrict "entrepreneurial freedom" in the same manner as it had prior to the Program and to control nearly every aspect of the manner and means through which agents solicit, market and sell insurance products and other services on Allstate's behalf.

119. Since the Program, Allstate has, in fact, continued to exercise at least as much control over agents who converted to so-called "independent contractor" status under the R3001S contract as it did when those agents enjoyed employee status under their R830 and R1500 contracts by, among other things:

- requiring Exclusive Agents to obtain Allstate's approval before engaging in any other form of business activity;
- prohibiting Exclusive Agents from selling insurance on behalf of Allstate's competitors;
- dictating the minimum number and most of the specific hours that an Exclusive Agent's office must remain open;
- imposing a dress code on Exclusive Agents and their staff;

- requiring Exclusive Agents to obtain Allstate's approval before hiring support staff employees;
- requiring Exclusive Agents to attend company meetings;
- compelling Exclusive Agents to replace their own telephone and computer systems with new systems leased from Allstate and linked to its centralized system, thereby enabling Allstate to monitor the details of their performance; prohibiting Exclusive Agents from using any software on those computer systems other than that supplied by Allstate or from communicating with clients and potential clients on web sites not approved by Allstate;
- requiring Exclusive Agents to forward incoming calls to Allstate customer service centers, thereby enabling Allstate to confiscate their business;
- ordering Exclusive Agents to solicit new client "leads";
- refusing to allow Exclusive Agents to use the word "Allstate" on agency "web pages" without the company's approval;
- mandating that any display advertisement Exclusive Agents wish to place in the Yellow Pages conform with Allstate's specifications, including the omission of any reference to Allstate; and
- imposing unobtainable production quotas upon Exclusive Agents and terminating their contracts and agency relationships if those quotas are not reached.

Thus, even though the R3001S contract states that agents "will have full control of [their] time and the right to exercise independent judgment as to the time, place, and manner of performing [their] duties," Allstate has compelled converted agents, under threat of termination, to comport with myriad requirements pertaining to the day-to-day operation of their agencies.

120. Thus, the promise of greater "entrepreneurial freedom" was false. It was made to try to hide the true purposes of the Program: to eliminate accrual and payment of retirement and other benefits to employee agents, and to weed out older employee agents.

121. **Replacement by Younger Employees.** Since 2000, Allstate has directly and/or functionally replaced employee agents who left the service of the company with thousands of younger individuals, the majority of whom are under the age of 40. These individuals, including newly-hired Exclusive Agents and employees hired to sell and service Allstate insurance via "1-800-ALLSTATE" and the Internet, have filled sales and customer service positions for which the terminated agents were amply qualified. In addition to the fact Allstate did not provide pension, medical and other benefits to newly-hired R3001 Exclusive Agents, the cost of providing employee benefits to newly-hired employees was far less than it would have been had a corresponding number of employee agents been transferred or rehired as employees to staff newly-established regional call centers to solicit insurance and other products via "1-800-ALLSTATE" and the Internet.

122. **No Reemployment.** Under the Pension Plan, any employee agent who was rehired by Allstate within twelve (12) months of termination did not incur a "break" in "continuous service," as the participant was entitled to receive credit for all previous service and for the period of "broken" service, as if he or she had never left the employ of the company.

123. Ordinarily, Allstate did not limit the rehiring of employees unless they were fired for poor performance or misconduct. However, in order to ensure that employee agents would not be able to frustrate the company's unlawful Program objectives by rejoining the company's employee population and taking advantage of the re-employment provisions in the Pension Plan (and its other retirement plans), Allstate adopted a policy under which it refused to reemploy employee agents terminated as part of Program for a period of at least one to two years. Allstate maintains this moratorium was not implemented until September

26, 2000 – that is, more than three months after the deadline it set for employee agents to sign the Release.

124. In accordance with this policy, Allstate unlawfully denied employment to a number of employee agents who had applied for sales, customer service, claims adjustor, security and other employee positions with Allstate during the period that the moratorium was in effect. Moreover, having learned of the rehire policy, a great many other former employee agents were deterred from applying for these employee positions because they knew that any such application would have been futile.

125. Absent the moratorium, many former employee agents would have applied for employment positions with Allstate once their R830 and R1500 contracts had been terminated. In fact, during the year-long period in which the moratorium was in effect, Allstate hired upwards of 1,000 individuals to fill sales, customer service and claims adjustor positions for which its former employee agents were eminently qualified.

126. As noted above, the individuals Allstate hired to staff these regional call centers were generally much younger than the employee agents subjected to the Program and the cost of providing benefits to these newly hired employees is far less than it would have been for a corresponding number of former employee agents. Accordingly, through the implementation of this discriminatory and retaliatory policy, Allstate was able to serve its twin objectives of cutting employee costs and reducing the average age of its work force.

127. **Damages and Impact.** The effect of the Program upon Plaintiffs and other former R830 and R1500 agents has been devastating. As a result of the termination of their employment contracts and the denial of their employee benefits, Plaintiffs have experienced a dramatic and sudden decline in their income that, in many cases, has forced them to further

deplete what remains of their life savings, to sell or mortgage their homes and even to declare personal bankruptcy.

128. As a result of the extreme economic hardship occasioned by the Program, many former employee agents, including many of the named Plaintiffs, have suffered from emotional distress, including anxiety, depression and loss of self-worth.

129. **Continuing Efforts by Allstate.** Since 2000, Allstate has taken steps to rid itself of most of the remaining former R830 and R1500 agents who signed the Release and continued in the company's service as "exclusive agent independent contractors" under the Forced Conversion Option. In fact, having purportedly swept aside the statutory protections afforded to them as "employees" and the procedural and other protections afforded under the express and implied terms of R830 and R1500 contracts, Allstate has singled out hundreds of these former employee agents, including some of the Plaintiffs named herein, for termination, thereby leaving them with no option but to attempt to recoup their investments of time and money by attempting to sell their books of business, in many instances at a significant discount due to the fact that there may be only a single purchaser Allstate is willing to approve, in its sole discretion. In other instances, the agents have not been able to sell and have merely received a significantly diminished termination payment under the terms of the R3001S contract.

CLAIMS

COUNT I

DECLARATORY JUDGMENT: INVALIDITY OF THE RELEASE UNDER ERISA, THE ADEA AND COMMON LAW (On Behalf Of All Plaintiffs)

130. Plaintiffs restate and re-allege the allegations contained in paragraphs 1 to 130 of this Complaint as though set forth here in full.

131. As employees of Allstate, Plaintiffs had a right not to be terminated from employment: (a) on the basis of their entitlement or anticipated entitlement to employee benefits under Section 510 of ERISA ("Section 510"), 29 U.S.C. § 1140; (b) on the basis of age once they attained the age of forty (40) under the ADEA; and/or (c) without "good cause" and without being afforded a reasonable time to make good on their investments in accordance with the express and implied terms of their employment agreements with Allstate.

132. Prior to the implementation of the Preparing for the Future Program, Plaintiffs had devoted the prime of their professional careers to obtaining and servicing customers on Allstate's behalf and invested substantial personal resources to create a profitable book of business based on Allstate's promises of job security and financial protection.

133. As part of its Preparing for the Future Program, Allstate informed Plaintiffs that it would terminate their employment status by June 30, 2000, and presented them with the Release under which they would have to relinquish, among other rights, their rights to challenge the termination of their employment on the ground that it violated Allstate's statutory obligations under the ADEA and ERISA, as well as its contractual and fiduciary obligations. Allstate further informed Plaintiffs that they could sign the Release and, thereby, either: (a) continue in the service of Allstate agent as "captive" so-called "independent contractors" who were not eligible

for pension and other employee benefits; or (b) cease providing service to Allstate upon selling their books of business or in exchange for certain severance payments. Alternatively, Plaintiffs had the "option" of refusing to sign the Release, whereby they would be left with no means to make good on their investments or to continue practicing their profession as insurance agents.

134. The EEOC determined that the Release was unlawful and retaliatory and so informed many Allstate agents prior to the June 1, 2000 deadline for executing the Release.

135. Having no alternative and facing these circumstances, Plaintiffs, like virtually all other employee agents subject to the Program, ultimately signed the Release.

136. The Release was part and parcel and in furtherance of an unlawful scheme to interfere with the attainment of rights to which employee agents were entitled or may have become entitled under the Plans, to rid the company of older employees and to otherwise retaliate against the 6,200 or so employee agents who had refused to convert to the R3001 contract since October 1990.

137. In view of the dire economic consequences that would result from a failure to execute the Release, Allstate's repeated misrepresentations concerning the rights and consequences of agents who chose to leave Allstate's service as opposed to those who continued in that service, the preliminary determination of the EEOC and the totality of the circumstances, the decision of Plaintiffs to sign the Release was made under duress, and was neither knowing nor voluntary and, hence, is invalid and unenforceable under the ADEA, ERISA and the common law.

138. Because Allstate acted with unclean hands in securing the Release from Plaintiffs, thereby affecting the balance of equities between the parties, Allstate is precluded from enforcing the Release against Plaintiffs.

139. Notwithstanding the allegations contained in the preceding paragraph, should it be determined that Allstate did in fact give Plaintiffs consideration to which they were not otherwise entitled in exchange for executing the Release, Plaintiffs offer to return said consideration (the "Consideration") to the extent that (i) a return of consideration is necessary to avoid ratification of the Release and (ii) such consideration is capable of being returned as determined by the Court.

140. Inasmuch as Plaintiffs received no consideration in addition to anything of value to which they already were entitled in exchange for executing the Release, it is invalid and unenforceable under the ADEA, ERISA and the common law.

141. In conditioning the continuance of their service and agency relationship with Allstate on Plaintiffs' waiver of their rights under federal remedial statutes such as the ADEA and ERISA, the Release is in violation of public policy and, hence, invalid and unenforceable.

142. In view of the vast disparity in bargaining power between Allstate and Plaintiffs, the grossly oppressive and one-sided terms of the Release, the fact that the Release was presented to Plaintiffs on a "take-it-or-leave-it" basis without any opportunity for negotiation, Allstate's repeated misrepresentations concerning the rights and consequences of agents who chose to leave Allstate's service as opposed to those who continued in that service, and considerations of public policy, the Release is unconscionable and, hence, invalid and unenforceable under the ADEA, ERISA and the common law.

COUNT II

BREACH OF THE R830 CONTRACT

(By Plaintiffs with an R830 Contract)

143. The Plaintiffs with an R830 contract reallege the allegations contained in paragraphs 1 through 130 of this Complaint as though set forth here in full.

144. The employment relationship between Allstate and the R830 Plaintiffs is governed by Allstate's standardized R830 contracts, all or almost all of which were entered into on or before September 30, 1984.

145. The R830 Plaintiffs fully performed all of their obligations under their R830 contracts with Allstate.

146. Under the express and implied terms of the R830 contract, Allstate could not terminate the R830 Plaintiffs except for "good cause" and in accordance with the procedures governing termination that are set forth in the R830 contract.

147. In order to minimize its costs and maximize its profits, Allstate compelled, encouraged and otherwise induced the R830 Plaintiffs to invest substantial personal resources in Allstate's insurance business since at least October 1, 1984, and continuing for the duration of their employment relationship.

148. In accepting the financial and other benefits of such investments, Allstate obligated itself, as a matter of law, to continue its employment relationship with the R830 Plaintiffs for at least a reasonable period of time for them to make good on their continuing investment in light of all the circumstances. These circumstances include, but are not limited to, the amount of the investments the R830 Plaintiffs made in Allstate's insurance business and the duration of the period over which such investments were made.

149. In implementing the Preparing for the Future Program, Allstate terminated the employment status of each of the R830 Plaintiffs without "good cause," without regard to the procedural safeguards set forth in the R830 contract, and without affording them a reasonable period of time to make good on their investments. Such termination was in material breach of Allstate's express and implied obligations under the R830 agreement.

150. As a result of Allstate's breaches of its contractual obligations, the R830 Plaintiffs have suffered losses, including but not limited to, termination of employment, loss of investment capital, loss of income and loss of benefits.

COUNT III

BREACH OF THE R1500 CONTRACT
(By Plaintiffs with an R1500 Contract)

151. The Plaintiffs with an R1500 contract restate and reallege the allegations contained in paragraphs 1 through 130 of this Complaint as though set forth here in full.

152. The employment relationship between Allstate and the R1500 Plaintiffs is governed by Allstate's standardized R1500 contracts, which were entered into between the approximate dates of October 1, 1984 through September 30, 1990.

153. The R1500 Plaintiffs fully performed all of their obligations under their R1500 contracts with Allstate.

154. Under the express and implied terms of the R1500 contract, Allstate could not terminate the R1500 Plaintiffs except for "good cause" and in accordance with the procedures governing termination that are expressly or impliedly incorporated into the R1500 contract.

155. In order to minimize its costs and maximize its profits, Allstate compelled, encouraged and otherwise induced the R1500 Plaintiffs to invest substantial personal resources

in Allstate's insurance business throughout the duration of the existence of their employment relationship.

156. In accepting the financial and other benefits of such investments, Allstate obligated itself, as a matter of law, to continue its employment relationship with the R1500 Plaintiffs for at least a reasonable period of time for them to make good on their continuing investments in light of all the circumstances. These circumstances include, but are not limited to, the amount of the investments made by the R1500 Plaintiffs and the duration of the period over which such investments were made.

157. In implementing the Preparing for the Future Program, Allstate terminated the employment status of each of the R1500 Plaintiffs without "good cause," without regard to the procedural safeguards governing termination that are expressly or impliedly incorporated into the R1500 contract, and without affording them a reasonable period of time to make good on their continuing investments. Such termination was in material breach of Allstate's express and implied obligations under the R1500 contract.

158. As a result of Allstate's breaches of its contractual obligations to the R1500 Plaintiffs, those members have suffered losses, including but not limited to, termination of employment, loss of investment capital, loss of income and loss of benefits.

COUNT IV

INTERFERENCE WITH EMPLOYMENT AND RETALIATION IN VIOLATION OF SECTION 510 (On Behalf Of All Plaintiffs)

159. Plaintiffs restate and reallege the allegations contained in paragraphs 1 to 130 of this Complaint as though set forth here in full.

160. Allstate designed and implemented the Preparing for the Future Program with the intention of interfering with the attainment and receipt of benefits under the Plans. As part of its unlawful scheme, Allstate informed Plaintiffs that it would terminate their status as employees, and its agency relationship with them entirely, unless each of them signed the Release and entered into an R3001S contract.

161. By implementing the Preparing for the Future Program, Allstate severed its employment relationship with approximately 6,200 of its employee agents, the Plaintiffs. Allstate permitted those Plaintiffs who agreed to become so-called "exclusive agent independent contractors" and who signed the Release to continue providing service to Allstate under the R3001S contract, but without pension and other employee benefits. With respect to those Plaintiffs who refused to sign the Release, and were unwilling to perform the same job as so-called "independent contractors," Allstate refused to permit them to remain in its service and terminated its employment and agency relationships with them entirely.

162. Almost immediately after terminating the employment status of all Plaintiffs, Allstate implemented a company-wide policy barring rehiring and employment of any former agents who were subject to the Preparing for the Future Program for a period of at least one year.

163. Both in discharging each of the Plaintiffs and in imposing a moratorium on rehiring them, Allstate and Liddy acted with the specific intent of interfering with the attainment of rights to which Plaintiffs were entitled or may have become entitled under the Plans.

164. Both the discharge of each of the Plaintiffs and the imposition of the rehiring policy constitute acts of retaliation against Plaintiffs for exercising the rights to which they were entitled under the Plans and ERISA.

165. The conduct of Allstate and Liddy as set forth in this COUNT II is in violation of ERISA Section 510.

166. As a result of the unlawful conduct of Allstate and Liddy as set forth in this COUNT II, Plaintiffs have suffered losses, including but not limited to, termination of employment and loss of benefits.

COUNT V

DISCRIMINATORY TERMINATION AND RETALIATION IN VIOLATION OF 29 U.S.C. § 623(a) and (d) (Disparate Treatment and Disparate Impact)

167. The Plaintiffs who were 40 or older (ADEA Plaintiffs) restate and reallege the allegations contained in paragraphs 1 through 130 of this Complaint as though set forth here in full.

168. As part of its Preparing for the Future Program, Allstate informed all of the Plaintiffs that it would terminate their employment status and gave each class member the alternative of remaining in Allstate's service under the R3001S contract or of ending his or her agency relationship with Allstate entirely.

169. Allstate was aware that over ninety (90) percent of the agents whose employment relationships were to be severed under the Preparing for the Future Program would be forty (40) years of age or older on the date of termination. Allstate understood and expected that a much larger percentage of the ADEA collective action members than other Plaintiffs would have their relationship with Allstate severed entirely under the Preparing for the Future Program, rather than remain in the company's service without benefits. Allstate also understood and expected that a much larger percentage of the ADEA collective action members than other Plaintiffs who continued the relationship beyond June 30, 2000, would discontinue the relationship within a few

years because of their unwillingness to remain in Allstate's service without benefits, or that Allstate itself would sever the relationship within a few years after the Preparing for the Future Program based on pretexts created through its onerous and discriminatory actions against them.

170. Allstate did, in fact, terminate the employment contracts under which each of the ADEA Plaintiffs had been hired. Allstate's actions also did, in fact, result in employee agents age forty (40) or older disproportionately leaving the company's service entirely. Allstate's actions had a significant and disproportionate adverse and discriminatory impact on employee agents who were age forty (40) and older, including each ADEA Plaintiff, in violation of the ADEA. This discriminatory employment practice was not based on reasonable factors other than age and there was no legitimate business reason or purpose for Allstate to terminate its long-time employee agents.

171. Allstate desired to get rid of ADEA Plaintiffs because of its stereotypes about them and replace them with younger individuals who were subsequently hired as employees in sales and customer service roles or as "exclusive agent independent contractors." Thus, Allstate severed these persons because of their age.

172. Allstate's termination of the ADEA Plaintiffs' employment and agency relationships with the company constitutes a discriminatory employment practice in willful violation of 29 U.S.C. § 623(a)(1) and in violation of 29 U.S.C. § 623(a)(2).

173. Allstate's decision to impose the R3001S contract, with its less favorable terms than the R3001 contract used prior to November 10, 1999, on the ADEA collective action members who decided to continue their relationship with Allstate after the Preparing for the Future Program, also constitutes a discriminatory employment practice in willful violation of 29 U.S.C. § 623(a).

174. As a result of Allstate's discriminatory conduct as set forth in this COUNT V, ADEA Plaintiffs have suffered losses, including but not limited to, termination of employment, loss of investment capital, loss of income and loss of benefits.

COUNT VI
BREACH OF FIDUCIARY DUTY
(On Behalf Of All Plaintiffs)

175. Plaintiffs restate and reallege the allegations contained in paragraphs 1 through 130 of this Complaint as though set forth here in full.

176. Under the employment relationship created between Plaintiffs and Allstate under the R830 and the R1500 contracts, Plaintiffs devoted the better part of their professional careers to obtaining and servicing customers on Allstate's behalf, invested substantial personal resources to create a book of business owned by Allstate, were barred from selling insurance or other products on behalf of any of Allstate's competitors, and executed a "non-compete" covenant which effectively prevented them from pursuing their profession independent of Allstate. As a result, Plaintiffs were at the mercy of Allstate in that they could not leave the service of the company without losing their investments and livelihoods.

177. In view of the grossly inequitable relationship Allstate had foisted upon them, Plaintiffs had no choice but to repose a "special confidence" in Allstate that it would not use its superior power to exploit their vulnerability and unfairly deprive them of the value of their investments and livelihoods. By virtue of that special confidence reposed in Allstate by Plaintiffs, Allstate owed those Plaintiffs a fiduciary duty of good faith and fair dealing and was required to act with due regard to their interests.

178. In terminating the employment status of each of the Plaintiffs without "good cause" and for purposes of denying them the value of their investments and livelihoods, Allstate

has exploited its relationship with Plaintiffs in violation of its fiduciary duty of good faith and fair dealing.

179. The conduct of Allstate, as set forth in this Count, is intentional, deliberate, oppressive and/or in reckless and callous disregard for the rights of Plaintiffs.

180. As a result of Allstate's breach of its aforementioned fiduciary duties, Plaintiffs and Plaintiffs have suffered losses, including but not limited to, termination of employment, loss of investment capital, loss of income and loss of benefits.

COUNT VIII

CUTBACK OF "BEEFED UP" EARLY RETIREMENT BENEFITS IN VIOLATION OF 29 U.S.C. 1054(g)(2)

(On behalf of ERISA 204(g)(2) Plaintiffs Against Allstate)

181. All Plaintiffs eligible for the "beefed up" early retirement benefits (the ERISA 204(g)(2) Plaintiffs) restate and reallege the allegations contained in paragraphs 1 to 130 of this Complaint as though set forth fully here.

182. Under the Pension Plan (prior to the unlawful and invalid November 1991 amendments), any employee agent who completes twenty (20) years of continuous services with Allstate is entitled to receive "beefed up" early retirement benefits upon reaching age 55.

183. In purporting to adopt the November 1991 amendments, and in "readopting" such amendments in December 1994 (retroactively to November 1991), Allstate purported to phase out and ultimately eliminate these "beefed up" early retirement benefits by December 31, 1999.

184. By amending the Pension Plan to phase out and eliminate "beefed up" early retirement benefits for agents who have met (after the Beef-Up Amendment) or may in the future

meet the pre-amendment eligibility requirements for early retirement, Allstate caused the Pension Plan to violate the "anti-cutback" rule embodies in 29 U.S.C. 1054(g)(2).

COUNT IX
CUTBACK OF EARLY RETIREMENT BENEFITS
IN VIOLATION OF 29 U.S.C. § 1054(g)
(On Behalf Of The ERISA Converted Agent Plaintiffs Against Allstate)

185. All ERISA Converted Agent Plaintiffs restate and reallege the allegations contained in paragraphs 1 to 130 of this Complaint as though set forth here in full.

186. Each of the ERISA Converted Agent Plaintiffs provided compensated service to Allstate as an "employee agent" under an R830 or R1500 contract prior to July 1, 2000.

187. Upon the termination of their employment contracts as part of the Program, each of the ERISA Converted Agent Plaintiffs continued to provide compensated service to Allstate as an "exclusive agent independent contractor" pursuant to an R3001S contract.

188. Under the Pension Plan, any employee agent who completes twenty (20) years of "service" with Allstate and who attains the age of 55 is entitled to receive early retirement benefits in the event he or she retires before reaching normal retirement age.

189. Under Allstate's own interpretation of the Pension Plan (as well as its interpretation of the November 1991 amendments to that plan), and under section 402(e) of the Internal Revenue Code, any converted agent of Allstate who provides any kind of compensated service to Allstate following the termination of his or her employment contract with Allstate remains "in the service of Allstate" for purposes of determining eligibility for early retirement benefits.

190. The express terms of the Pension Plan (prior to the unlawful and invalid amendments discussed in above (the "Amendments")) state that "[a]ll service" with Allstate

"shall count as Credited Service." Accordingly, under the Pension Plan, any employee agent of Allstate who converted to Exclusive Agent, and thus continues to provide compensated "service" to the company under a contract creating an "exclusive agent independent contractor" relationship, continues to accumulate "service" under the Pension Plan for purposes of determining eligibility for early retirement benefits.

191. Under the Amendments to the Pension Plan, Allstate purported to alter the eligibility requirements for obtaining early retirement benefits by only counting "service" that agents performed in their capacity as Allstate-classified "employees" toward the fulfillment of those requirements and excluding any "service" they provided to the company as a so-called "exclusive agent independent contractor."

192. In imposing requirements that made it more difficult for participants to meet the eligibility requirements for obtaining early retirement benefits under the Pension Plan, the Amendments violated the "anti-cutback" rule embodied in 29 U.S.C. § 1054(g)(2).

193. Alternatively, even if "service" provided to Allstate as an "exclusive agent independent contractor" never counted as "service" for purposes of determining eligibility for early retirement benefits under the Pension Plan, the ERISA Converted Agent Plaintiffs are not truly "independent contractors." Since those plaintiffs began providing service to Allstate under the R3001S contract, Allstate has retained the right to control the manner and means through which they perform their jobs as "captive" agents. Moreover, since the time they converted to the R3001S contract, Allstate has actually exercised at least as much control over the ERISA Converted Agent Plaintiffs as it did prior to the purported termination of their employment status and R830 or R1500 contracts. Accordingly, at all pertinent times, all of the ERISA Converted Agent Plaintiffs have been "employees" of Allstate within the meaning of 29 U.S.C. § 1002(6).

194. By amending the Pension Plan to no longer count all "service" which the ERISA Converted Agent Plaintiffs provide, for purposes of determining eligibility for early retirement, Allstate has caused the Pension Plan to violate the "anti-cutback" rule embodied in section 204(g) of ERISA.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectively pray as follows:

A. That a declaratory judgment be issued declaring that the Release is invalid and/or unenforceable under the ADEA, ERISA and/or the common law, pursuant to 29 U.S.C. §§ 626(f)(1) and 1132(a)(3) and 28 U.S.C. §§ 2201 and 2202, and therefore does not bar Plaintiffs from pursuing the substantive claims asserted on their behalf in *Romero* as putative class or collective action members, or alternatively asserted herein;

B. That the Court treat Plaintiffs as members of any class or collective action certified in the *Romero* cases as to the claims in Counts II through IX once the Release is declared invalid;

C. That all equitable relief as may be appropriate be issued, including a permanent injunction compelling Allstate to (i) disgorge all savings realized and/or revenue received as a result of the Program, (ii) reform the terms of the Plan to provide benefits to which the Plaintiffs should be entitled, and/or (iii) offer all named plaintiffs, other than those solely suing as personal representatives for a deceased former agent's Estate, the opportunity to be reinstated under the same terms and conditions which existed prior to the termination of their employment status and

restoration to participant status under the Plans, pursuant to 29 U.S.C. §§ 626(b) and 1132(a)(3).

D. That judgment be entered in favor of Plaintiffs and against Allstate and Liddy restoring to them all benefits and other forms of compensation lost between the dates of the termination of their employment and the date of judgment, together with interest or an appropriate inflation factor, pursuant to 29 U.S.C. § 1132(a)(3);

E. That judgment be entered in favor of Plaintiffs and against Allstate for lost benefits, future benefits, back pay (including interest or an appropriate inflation factor), front pay, lost investment capital, and liquidated damages, pursuant to 29

U.S.C. § 626(b);

F. That judgment be entered in favor of Plaintiffs and against Allstate for all direct, incidental, and consequential damages arising out of Allstate's breaches of contract;

G. That judgment be entered in favor of Plaintiffs and against Allstate for all direct, incidental, and consequential damages, including non-financial injuries, arising out of Allstate's breaches of fiduciary duty, and for punitive damages in amounts to be determined at trial;

H. That a constructive trust or equitable lien in restitution be imposed over Allstate's assets sufficient to cover all losses suffered by Plaintiffs as a result of the violations of ERISA;

I. That the practices of Allstate and the Administrator complained of in Counts VII- IX herein be determined and adjudged to be in violation of the rights of Plaintiffs under ERISA, pursuant to 29 U.S.C. § 1132(a)(3);

J. That the Court issue a permanent injunction under ERISA, pursuant to 29 U.S.C.

§ 1132(a)(3) and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, compelling Allstate and the Administrator to:

(1) count any periods of service that converted and retired agents have provided to Allstate under the R3001 contract as "service" for purposes of determining their eligibility for early retirement benefits; and

(2) repeal or set aside the November 1991 and December 1994 plan amendments relating to early retirement and the "beef-up" retroactively to the dates those amendments were adopted, as a remedy for the statutory violations described in COUNTS VII and VIII;

K. That the Court enter judgment in favor of Plaintiffs against:

(1) the Pension Plan and the Administrator pursuant to 29 U.S.C. § 1132(a)(3) for "make whole" or other equitable relief; and

(2) Allstate pursuant to 29 U.S.C. § 1132(a)(3) for "make whole" or other equitable relief, as a remedy for the violations of fiduciary obligations described in COUNT IX.

L. That the Court enter judgment in favor of Plaintiffs against the Pension Plan pursuant to 29 U.S.C. § 1132(a)(1)(B) after the Court has provided the relief set forth in paragraph I above.

M. That Plaintiffs be awarded such other and further relief as may be found just and appropriate;

N. That Plaintiffs be granted their attorneys' fees, experts' fees and the costs and expenses of this litigation, pursuant to applicable law; and

O. That the Court retain jurisdiction over Allstate, the Pension Plan and the Administrator until such time as it is satisfied that the practices complained of are remedied and are determined to be in full compliance with the law.

JURY TRIAL DEMANDED

Plaintiffs request a jury trial on all questions of fact raised by this Complaint, as well as on all claims so triable.

Respectfully submitted,

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*/s/ Justin S. Gilbert*________________________

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and exact copy of the foregoing has been mailed electronically via the Court's electronic filing system to all counsel of record, on this the 1st day of December, 2015:

*/s/ Justin S. Gilbert*________