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United States District Court,

E.D. Pennsylvania.

Gene R. ROMERO, et al.

v.

ALLSTATE INSURANCE COMPANY, et al.

Gene R. Romero, et al.

v.

The Allstate Corporation, et al.

Equal Employment Opportunity Commission

v.

Allstate Insurance Company, et al.

Civil Action Nos. 01-3894, 01-6764, 01-7042. |
March 21, 2007.

Attorneys and Law Firms

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Opinion

MEMORANDUM AND ORDER

FULLAM, Sr. J.

*1 After unduly protracted consideration of the numerous motions still pending in these consolidated cases, I have reached the following tentative conclusions:

1. The decision of the Eleventh Circuit Court of Appeals in *Scott v. Administrative Comm. of the Allstate Agents Pension Plan*, 113 F.3d 1193 (11th Cir.1997), and the later decision of the United States District Court for the Southern District of Florida in *Swain v. Allstate Ins. Co.* (No. 96-0998) (Jan. 22, 1999), taken together, establish that the questioned amendments to the Allstate Pension Plan in this case were validly adopted and became effective. Regardless of whether these decisions give rise to a *res judicata* defense, or whether the plaintiffs in those cases should be regarded as in privity with the plaintiffs in our cases so as to give rise to collateral estoppel, this court has not been presented with any significant basis for disagreeing with those decisions.

2. The decision of the Seventh Circuit Court of Appeals in *Isbell v. Allstate Ins. Co.*, 418 F.3d 788 (7th Cir.2005), warrants the conclusion that plaintiffs' claims of ERISA violations, age discrimination, and retaliation must fail. Again, that conclusion would be the same regardless of whether *res judicata* or collateral estoppel apply (i.e., because this court elects to follow the Seventh Circuit Court of Appeals).

3. To the extent that this court's Order of March 3, 2004 declared that the releases were voidable, that decision was in error and should be vacated. Alternatively, the validity of the releases has become moot.

4. All other pending motions should be regarded as moot.

5. In view of the proliferation of motions and the length and complexity of counsel's various briefs, counsel should be afforded an opportunity to call this court's attention to (a) any issue or issues which may have been overlooked, and (b) any argument or other factor impugning the correctness of the *Scott*, *Swain* and *Isbell* decisions.

IT IS THEREFORE ORDERED:

Counsel may, within 20 days, file memoranda addressing (a) issues which this court may have overlooked in reaching the tentative conclusions expressed above, and (b) additional arguments tending to show that the *Scott* and *Isbell* Court of Appeals decisions were incorrect. Any such additional memoranda should not exceed 10 pages in length.

