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

JOE A. HOOVEN et al.	:	**No. 00-CV-5071**
	:	
v.	:	
	:	
EXXON MOBIL CORPORATION et al.	:	

MEMORANDUM OPINION AND ORDER

Rufe, J. **March 31, 2004**

Before the Court are the claims of fifty-two (52) former employees of Mobil Corporation (collectively "Plaintiffs") against Exxon Mobil Corporation ("Exxon Mobil") and Mobil Corporation Employee Severance Plan (collectively "Defendants").

In December 1998, Plaintiffs were each employees of Mobil Corporation (hereinafter "Mobil") in the Mid-Atlantic Marketing Assets division when Mobil formally announced its planned merger with Exxon Corporation (hereinafter "Exxon") to create Exxon Mobil. At that time, Mobil announced the adoption of a new Enhanced Change-In-Control Retention/Severance Plan ("the CIC Plan"), which provided employees with attractive severance packages in the event they did not ultimately receive jobs with the combined company following the merger. Plaintiffs allege that from the time the proposed merger was announced and to the end of 1999, Mobil, both orally and in writing, assured Plaintiffs that employees who did not obtain employment with Exxon Mobil would receive fair and attractive severance packages.

In August 1999, Plaintiffs were given a Summary Plan Description ("SPD") setting forth the eligibility requirements for enhanced severance benefits in the event of a change in control. Due to a drafting error, however, the SPD omitted an eligibility exception with respect to divestitures that applied to Tier 4 employees, such as Plaintiffs. On November 30, 1999, the Federal Trade Commission approved the merger between Exxon and Mobil. On December 2, 1999, Plaintiffs were first informed that their employment with Mobil was being terminated, and they were not being offered positions with Exxon Mobil. Plaintiffs were also then informed that they were ineligible to receive severance benefits because the enhanced severance package did not apply to employees within their salary group (Tier 4). Although the SPD did not contain this ineligibility provision, the provision was contained in the CIC Plan. The divestiture ineligibility provision was, however, later included in an Errata that was mailed to Plaintiffs in February 2000. Between March and May 2000, Plaintiffs, as a unit, were transferred to Tosco Corporation (hereinafter "Tosco"), the company which purchased Mobil's Mid-Atlantic Marketing Assets division.

Plaintiffs advance claims under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132, pleading claims for breach of fiduciary duty, equitable estoppel, federal common law breach of contract, and procedural and reporting violations.[1] On June 5, 2002, the Court denied cross-motions for summary judgment on the ground that genuine issues of material fact existed, including: (1) whether Defendants actively misled Plaintiffs about severance benefits; (2) whether Plaintiffs detrimentally relied upon the representations of Defendants; (3) the terms of any contract between the parties; and (4) whether extraordinary circumstances warranted the imposition of statutory penalties. Hooven v. Exxon Mobil Corp., No. 00-CV-5071, 2002 WL 1277325, 2002 U.S. Dist. LEXIS 10274 (E.D. Pa. June 5, 2002).

[1] The Court has jurisdiction over this matter pursuant to 29 U.S.C. § 1132(f) and 28 U.S.C. § 1331.

After an 8-day trial during which more than 20 witnesses testified and voluminous records were introduced, the Court allowed additional briefing and took the matter under advisement. The Court now sets forth its Findings of Fact, Discussion, and Conclusions of Law:[2]

FINDINGS OF FACT

1. On June 16, 1998, Mobil CEO Lucio Noto and Exxon CEO Lee Raymond initiated discussions regarding the possibility of a merger. (Trial Ex. P-2.).

2. Mobil hired a law firm to draft the CIC Plan.

3. Mobil Attorney Douglas Davies was responsible for ERISA compliance and participated in the drafting of the CIC Plan.

4. In 1998, Davies conferred with Noto and other members of senior management, addressing the prospect that, in the event of a merger, both tangible assets as well as employees may need to be divested. (Tr. Day 7 at 134-36).

5. On or about September 25, 1998, the Mobil Board revoked Mobil's prior change in control plan and adopted the CIC Plan. (Trial Ex. P-10). The CIC Plan's provisions for eligibility and the calculation of benefits depended, in part, upon the salary grade of a particular employee. The Plan recognized four salary grades: Tiers 1, 2, 3 and 4. The CIC Plan differed from Mobil's prior plan with regard to divestitures involving Tier 1, 2 or 3 level employees because, unlike the prior plan, divested Tier 1, 2 or 3 level employees were eligible to

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[2] Prior to trial, the parties entered into a comprehensive Stipulations of Facts, many of which have been incorporated into the Court's factual findings.

receive severance benefits under the new CIC Plan.[3] Under the terms of the CIC Plan, however, Tier 4 employees continued to be ineligible for severance benefits in the event of a divestiture.

6. Plaintiffs were all Tier 4 employees, which encompassed only employees in salary groups 19 and below.

7. Section 1.19 of the CIC Plan defines a "severance" as follows:

> the termination of an Eligible Employee's employment with the Employer (or, if applicable, a successor to the Employer) on or within two years following the date of a Change in Control, (i) by the Employer other than for Cause, or (ii) by the Eligible Employee for Good Reason. An Eligible Employee will not be considered to have incurred a Severance (i) if his or her employment is discontinued by reason of the Eligible Employee's death or a physical or mental condition causing such Eligible Employee's inability to substantially perform his or her duties with the Employer, including, without limitation, such condition entitling him or her to benefits under any sick pay or disability income policy or program of the Employer or (ii) *in case of a Tier 4 Employee, by reason of the divestiture of a facility, sale of a business or business unit, or the outsourcing of a business activity with which the Eligible Employee is affiliated if the Eligible Employee is offered comparable employment by the entity which acquires such facility, business or business unit or which succeeds to such outsourced business activity.*

(Trial Ex. P-10) (emphasis added.)

8. The CIC Plan was not published on Mobil's Intranet site or distributed to Mobil employees when it was adopted. The text of the CIC Plan, however, was available to employees upon request. (Tr. Day 3 at 43-44).

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[3] The Standard Plan provided that Tier 1, 2, 3 and 4 employees "will not be eligible to participate in this Plan if Mobil determines that your separation from service arises out of any of the following circumstances . . .[y]ou are offered other employment arranged for or secured by Mobil" or "[y]ou are offered employment by the purchaser or successor of any business divested by Mobil." (Trial Ex. P-77).

9. The CIC Plan had three important objectives: (1) to provide transition income to Mobil employees who lose their jobs after the Exxon Mobil merger or any other "change in control" of Mobil Corporation or any successor company; (2) to encourage employees to stay with the company through the time that their employment was terminated by the company (Trial Ex. P-12); and to retain employees during the merger. (Tr. Day 8 at 72).

10. On December 1, 1998, the Boards of both Mobil and Exxon officially approved the merger, and Mobil publicly announced to its employees its intent to merge with Exxon. (Tr. Day 3 at 75). That day Noto sent a mass e-mail to "All Mobil Employees" announcing the merger, attaching a press release and stating:

> But like other mergers, with this announcement, comes the painful reality that some people in each company will lose their jobs. Where similar responsibilities exist today in both companies, only one person with that responsibility may be required in the new company. Where assets, geographic locations or business endeavors overlap, consolidation of positions will occur. In those instances, both Mobil and Exxon have agreed to a cooperative process to select the right people for the remaining positions.
>
> To those of you who do not ultimately remain with the combined company, we will extend a fair and attractive separation compensation and benefit program. Because we are very early in this process many of your questions can not yet be answered. Most details are yet to be worked [out] by a transition team to be established to manage the integration of the two companies. Further information can be found in communications that will be forwarded to you as key decisions are taken.

(Trial Ex. P-14 at D14465).

11. In the December 1, 1998 e-mail, Noto also informed Mobil employees that the Exxon Mobil merger was expected to yield $2.8 billion in short term cost savings and significant

long-term, improved profitability. (Trial Ex. P-14 at D14468).

12. Also on December 1, 1998, pursuant to Noto's directive, L.W. Allstadt, a member of Mobil's Executive Committee and the executive in charge of coordinating merger communications, distributed materials to certain Mobil management, including Gene Renna, Robert Amrhein, and Brian Baker, to use while briefing Mobil employees about the merger. The briefing materials included Noto's e-mail dated December 1, 1998, the Mobil press release, Employee Q & As, and a Powerpoint presentation. (Trial Exs. P-15 and P-16).

13. Employee Question 23 asked whether there would be job reduction. The answer to Employee Question 23 stated in part: "Yes. . . . Employees who regrettably will not be asked to join the new company will be offered a fair and attractive separation compensation and benefit program." (Trial Ex. P-15 at D14185).

14. Employee Question 25 asked how Mobil expected to keep it employees. The answer to Employee Question 25 stated in part: "Special retention compensation arrangements are also being put into place for those who are [not] offered jobs in the merged company." (Trial Ex. P-15 at D14185).

15. Manager Question 68 asked: "What will be the severance packages for Mobil employees? Are they the same for employees and senior management?" The answer to Manager Question 68 stated in part: "There will be a special severance package for employees who are ultimately not retained by the merged company. For most U.S. employees, it will represent twice the normal severance payment for employees and managers applicable under current Mobil separation and benefit plans. . . ." (Trial Ex. P-16 at D14236).

16. Manager Question 73 asked: "How do you expect to keep your employees?" The answer to Manager Question 73 stated in part: "Special retention compensation arrangements are also being put into place." The answer to Manager Question 131A stated in part: "Employees who regrettably will not be asked to join the new company will be offered a fair and attractive separation compensation and benefit program." (Trial Ex. P-16 at D14237).

17. In conjunction with the merger announcement, Mobil management began holding informational meetings with Mobil employees to announce and discuss the proposed merger with Exxon. During those meetings, Mobil management explained that there would be a selection process to determine which employees would obtain employment with the merged company if the transaction were to be consummated. Mobil management also explained that some employees would lose their jobs because there would be instances where these jobs would overlap with jobs of others at Exxon. Mobil management did not address the issue of divestiture during these informational meetings. (Tr. Day 2 at 29-30; Tr. Day 3 at 76-83). The purpose of these meetings was to communicate information about the merger and the potential effects it would have on employees because the merger would possibly result in the loss of approximately 9,000 to 12,000 jobs. (Tr. Day 3 at 79-80). At the meetings, Mobil employees, including Plaintiffs, were told they would either be offered employment with the new company or they would receive the enhanced severance benefit package. At the meetings, Mobil management encouraged Mobil employees, including Plaintiffs, to work hard, to stay focused, and to maintain a competitive edge while the merger was pending. In addition, many Plaintiffs watched a video made by Mobil CEO Noto discussing the merger and describing the impact the merger would have on employees, shareholders, and the oil industry. (Trial Ex. D-6). Based on the

representations made by Mobil management while the merger was pending, Plaintiffs generally understood they would either be selected for a job with the newly merged entity or would be eligible for the enhanced severance package. (Tr. Day 2 at 13-14, 108; Tr. Day 4 at 13, 54). Mobil executives made clear, however, that they were not describing all of the details regarding the Plan and that additional information would be provided subsequently. (Tr. Day 1 at 91-92; Tr. Day 4 at 11-12).

18. Although divestitures were a possibility, including divestiture of employees, and despite Mobil's promise to keep employees informed, Mobil management never orally communicated the existence of the divestiture provision of the CIC Plan or the possibility of divestitures with Mobil employees at any of these company meetings or in any direct correspondence. (Trial Exs. P-14 and D-6; Tr. Day 3 at 34, 81).

19. Following the December 1998 meetings, Mobil sent an e-mail to all of its employees worldwide about its creation of a website addressing merger-related issues. That e-mail stated:

> Employee Questions on the Proposed Exxon Mobil Merger
>
> Mobil has established an "Employee Question and Answer" Web site for you to ask questions regarding the proposed Exxon Mobil merger. The site is located on the Intranet. Questions will remain anonymous. Mobil will post new questions and answers weekly (except during the holidays).
>
> As you may be aware, 48 hours after Mobil's public announcement of its proposed merger with Exxon (12/1/98), for regulatory reasons, we entered a "quiet period," which severely limits what we can say about the merger both internally and externally.

> Our commitment to you is to communicate as much as we can as soon as possible. Our goal is that every employee is treated equitably and fairly.
>
> You can find the new Employee Question and Answer Web site at: <u>www.internal.mobil.com.</u>

(Trial Ex. D-10).

20. Mobil representatives did not state that the website would serve as a replacement for the traditional manner in which the company communicated information from Mobil, which was by regular mail. (Tr. Day 2 at 146-47; Tr. Day 4 at 15).

21. In January 1999, Mobil published on the Intranet a summary of the terms of the CIC Plan on its website. The Intranet summary provided as follows:

> **CHANGE IN CONTROL (CIC) U.S. RETENTION/SEVERANCE DETAILS U.S. SALARY GROUPS 19 AND BELOW**
>
> Many of you have been asking for information about the Mobil Corporation Employee Severance Plan (CIC retention/severance package). This communication will give you a brief description of the package for U.S. employees at Salary Groups 19 and below only.
>
> **ELIGIBILITY**
>
> - You will be eligible to receive the CIC retention/severance package described below if:
>   - you are a regular, non-represented employee in salary groups 19 and below on the U.S. payroll who works at least 20 hours per week; and

- your employment is terminated by the Company within two years after the CIC; or
- you are offered a job by the Company within two years after the CIC, but decline because it involves either
  - a cut in total annual pay (including target variable pay), or
  - a job move of at least 50 miles,

  And you are not offered another position or the opportunity to remain in your existing position; and

- you stay until you are released by the Company; and
- you sign a separation agreement.

This package will be in effect for terminations during the two-tear [sic] period following the date of the CIC. **CIC does not occur until after all regulatory and shareholder approvals are received and the stock of Mobil is exchanged for the stock of Exxon.**

- you will not be eligible to receive the CIC retention/severance package described below if:

  - your employment terminates prior to the CIC for any reason; or
  - you are represented, temporary, leased or Station Operators, Inc. (SOI) employee, or you are classified as a contractor or consultant not eligible to participate in Mobil's benefit plans, or you are providing services under a written or oral contract; or
  - you are terminated for cause, or separated because of disability or death; or

- you decline a position as a result of a divestiture or outsourcing after the CIC that does not involve:
  - a cut in total annual pay (including target variable pay), or
  - a job move of at least 50 miles

BENEFITS

If you are eligible and sign a separation agreement, you will receive the following CIC retention/severance package.

- **EIGHT-WEEK NOTICE PERIOD**

  During the eight-week notice period, you will remain on the payroll with your current benefits. You may be required to work during part or all of this period.

- **CASH BENEFIT**
  - Four weeks of pay for every year of service, to a maximum of 104 weeks. This is two times . . . .

(Trial Ex. P-76) (footnotes omitted).

22. The divestiture language included in the Intranet summary posting differs from the divestiture language included in the CIC Plan. The divestiture language included in the Intranet summary posting also differs from the divestiture language included in the Errata (discussed infra) provided to Plaintiffs in February 2000 and the divestiture language included in the prior plan. Moreover, the Intranet summary was not particularly clear or well written and fails to track the structure of the CIC Plan, making it difficult to understand. (Tr. Day 7 at 147).

23. The Intranet posting containing the summary of the CIC Plan was not the SPD and therefore not subject to ERISA's statutory requirements. It was not intended by Mobil to replace the company's obligations under ERISA as it had been Mobil's practice to mail summary plan descriptions to employees. (Tr. Day 7 at 149). Moreover, Mobil did not post a summary on the Intranet for employees in Tiers 1, 2 and 3. Instead, Mobil mailed, via first class mail, Tier 1, 2 and 3 employees hard copies of a document summarizing their benefits under the CIC Plan. (Tr. Day 7 at 151-52).

24. Some Plaintiffs did not access Mobil's Intranet website because they generally do not review information on the web or were otherwise uncomfortable using computers. (Tr. Day 2 at 21-22, 36, 47-48; Tr. Day 5 at 92). Other Plaintiffs did not access Mobil's Q & A website because they were confident they had the information they needed from meetings with Mobil management and from the CIC Plan Summary. (Tr. Day 4 at 60-61). Still other Plaintiffs accessed the Q & A website, but found it contained many questions that did not pertain to them, involved too much scrolling, and was otherwise too time-consuming. (Tr. Day 1 at 158-59; Tr. Day 2 at 47, 147-48; Tr. Day 4 at 15-16, 111; Tr. Day 5 at 22). A few Plaintiffs were truck drivers who did not have access to Mobil's Intranet site at any time. (Tr. Day 4 at 111).

25. Mobil's Benefits Policy and Communications Department ("Benefits Group"), headed by Patricia Pagano, included a team of professionals dedicated to preparing useful and understandable communications to Mobil employees about Mobil's various benefits plans. (Tr. Day 6 at 101; Tr. Day 7 at 102-05). In January 1999, following the posting of the Intranet summary, Mobil retained Barbara Rineheimer, a consultant with Towers Perrin Forster & Crosby, to prepare an initial draft of the SPD for the CIC Plan. (Tr. Day 6 at 115).

26. Mobil's Benefits Group was responsible for drafting an SPD that was clear and understandable. (Tr. Day 6 at 128-29; Tr. Day 7 at 23-24, 118, 148-49). The drafters of the SPD knew they had to set forth the material provisions of the plan regarding "eligibility and ineligibility" in an understandable way. (Tr. Day 7 at 167). Between January and July 1999, the Benefits Group revised the proposed SPD on several occasions.

27. The divestiture provision was a material provision. (Tr. Day 7 at 167).

28. Pagano, the primary drafter of the SPD, understood that the CIC Plan differed from previous Mobil severance plans in eligibility requirements. (Tr. Day 6 at 132).

29. The first draft of the SPD prepared by Rineheimer provided, in relevant part:

> Severance benefits are not paid if: . . . [you] are offered but decline another position that does not involve:
>
> a cut in total annual pay, including variable pay, or
>
> a job move of at least 50 miles.

(Trial Ex. D-17).

30. Pagano modified the Rineheimer draft by adding the terms "divestiture" and "outsourcing" to the draft of the SPD (dated January 30, 1999), which provided that an employee was not eligible for benefits if:

> [you] are offered but decline another position as a result of a divestiture or outsourcing after the CIC that does not involve:
>
> a cut in total annual pay, including variable pay, or
>
> a job move of at least 50 miles.

(Trial Ex. D-17; Tr. Day 6 at 116).

31. On February 12, 1999, another draft of the SPD was circulated by Pagano. It provided that an employee was ineligible for benefits if:

> you decline a position as a result of a divestiture or outsourcing after the CIC that does not involve:
>
> a cut in total annual pay (including target variable pay), or
>
> a job move of at least 50 miles.

(Trial Ex. P-50; Tr. Day 6 at 117-19).

32. On February 19, 1999, the draft SPD, unchanged in relevant part, continued to provide that an employee was ineligible for benefits if:

> you decline a position as a result of a divestiture or outsourcing after the CIC that does not involve:
>
> a cut in total annual pay (including target variable pay), or
>
> a job move of at least 50 miles.

(Trial Ex. P-51; Tr. Day 6 at 119-21).

33. On March 16, 1999, the draft SPD, still unchanged in relevant part, provided that an employee was ineligible for benefits if:

> you decline a position offered as a result of a divestiture or outsourcing after the CIC that does not involve:
>
> a cut in total annual pay (including target variable pay), or
>
> a job move of at least 50 miles.

(Trial Ex. P-52).

34. In March 1999, as the SPD was being finalized, the Benefits Group reviewed and redrafted the SPD and determined that the inclusion of the phrase "as a result of a divestiture

or outsourcing" provided too narrow a description of ineligibility under the CIC Plan, and deleted the phrase. (Tr. Day 6 at 122; Tr. Day 7 at 18-19). The Benefits Group believed that deleting those words would make the terms of ineligibility clearer to employees in Grade 19 and below. (Tr. Day 6 at 18, Tr. Day 7 at 122, 136-37). Also in March 1999, the Benefits Group circulated another SPD for grades 20 and higher. (Tr. Day 7 at 148). The SPD for Grades 20 and higher contained the same language as the SPD for Grades 19 and below regarding ineligibility as the result of obtaining comparable employment, even though the ineligibility as the result of divestiture applied to employees at Grades 19 and below only. (Tr. Day 6 at 21, 46-7; Day 7 at 84-86, 148; Trial Ex. P-34). The modifications were made despite the Benefits Group's intention that Grades 20 and higher should interpret this ineligibility provision as not applicable to a divestiture situation. (Tr. Day 6 at 45-47; Tr. Day 7 at 138-50).

35. Although the Benefits Group determined that it was inappropriate to refer to a divestiture situation in the SPD, it never revised the Intranet summary, which contained the same provision that was deemed by the group to be too narrow. (Tr. Day 6 at 139).

36. By drafting the provision in the manner eventually circulated to Plaintiffs, the SPD failed to advise Plaintiffs that they would be ineligible for severance in the event of a divestiture. (Tr. Day 7 at 42).

37. In May 1999, James Carter, then Vice President of Marketing for Exxon, made a presentation to the Federal Trade Commission ("FTC") staff to convince them that the proposed merger would not violate antitrust laws. (Tr. Day 8 at 12, 14).

38. As of June 1, 1999, the SPD's description of ineligibility had not changed since March 1999. It provided that an employee was ineligible for benefits if:

> you decline a position offered after the CIC that does not involve:
>
> > a cut in total annual pay (including target variable pay), or
> > a job move of at least 50 miles.

(Trial Ex. P-12).

39. As of June 3, 1999, Mobil management anticipated that the merger of Exxon and Mobil would receive regulatory approval by about the end of the third quarter. (Trial Ex. P-38 at D10289).

40. In July 1999, the SPD was finalized, and Mobil mailed it to Plaintiffs in August 1999. (Tr. Day 7 at 106).

41. The eligibility and ineligibility provisions of the final version of the SPD provided, in relevant part, as follows:

> You are eligible to participate in the CIC retention/severance package if:
>
> ■ you are a regular, non-represented employee in salary group 19 or lower on the U.S. payroll who works at least 20 hours per week; and
>
> ■ your employment is terminated by the Company within two years after the change in control; or
>
> ■ you are offered a job* by the Company within two years after the change in control, but you decline it because it involves either:
>
> > – a cut in total annual pay (your annualized based pay on the date of change in control *plus* your target variable pay), or

– a job move of at least 50 miles; and

■ you sign a Separation Agreement.

You are ***not*** eligible to participate in the CIC retention/severance package if any of the following is true:

■ your employment is terminated by the Company prior to CIC for any reason;

■ you are a represented employee, unless your union bargains for eligibility;

■ you are a Station Operators, Inc. (SOI) employee;

■ you are not eligible to participate in Mobil's benefit plans;

■ you are terminated for cause;

■ your employment ends as a result of death or disability prior to your separation date under the Plan;

■ you decline a position offered after the CIC that does not involve:

–a cut in total annual pay (including target variable pay), or

– a job move of at least 50 miles;

■ you provide services to Mobil under a written or oral contract or agreement pursuant to which you are treated as:

– a consultant,

– an independent contractor,

– an employee of an entity other than Mobil, or

– a leased employee from a temporary or employment agency.

Any person retained under any special contract or arrangement shall be ineligible to participate in this Plan, without regard to whether the arrangement would constitute employment under legal principles, unless such contract or arrangement specifically provides for participation in all of Mobil's benefit plans.

(Trial Ex. P-12 at D13174).

42. The SPD also contained the following language regarding modification of

benefits:

> Mobil reserves the right to modify, suspend, or terminate benefits at any time for any reason. If such steps are taken, you will be notified. You will also be informed of the effect that any material changes in the plans will have on your rights to benefits.
>
> However, the Severance Plan may not be terminated or modified while a change of control is pending, or within:
>
> - Six months following a potential change in control, or
> - Two years following a change in control.

(Trial Ex. P-12 at D13182).

43. The CIC Plan also provided that benefits could not be modified within two years of a change in control:

> The Plan may be amended or terminated by the Board at any time; provided, however, that the Plan may not be terminated or amended during the pendency of, or within six (6) months following a Potential Change in Control or within two years following a Change in Control.

(Trial Ex. P-10 at D10209).

44. Each of the Plaintiffs received and reviewed the SPD. Based upon the eligibility/ineligibility language in the SPD, Plaintiffs understood that they were entitled to an enhanced severance package if they did not receive an offer of employment with Exxon Mobil. (Tr. Day 1 at 139; Tr. Day 2 at 56-57, 143-44; Tr. Day 3 at 50; Tr. Day 4 at 16, 54, 92; Tr. Day 5 at 29-30, 86-87; Tr. Day 7 at 169-71).

45. Around June or July 1999, Carter began to lead the Remedies Team, which

was established to analyze other mergers in the oil industry, determine what remedies the FTC might require in order to agree not to oppose the merger, and then ascertain what would be the "very best deal" possible to avoid a challenge by the FTC to the merger. (Tr. Day 8 at 16, 31). At the time he was appointed to the Remedies Team, Carter knew the FTC was likely to require certain divestitures. (Tr. Day 8 at 45).

46. None of the employees who drafted the SPD knew anything about the remedies discussions with the FTC staff. (Tr. Day 6 at 128).

47. Once the Remedies Team completed its discussions with the FTC, it was to present its findings to the senior executives of Exxon and Mobil so they could determine whether to (1) agree to the FTC's terms, (2) merge without the FTC's involvement and contest any FTC challenge in court, or (3) decide to terminate the Merger Agreement. The Remedies Team had no authority to agree to any divestitures. (Tr. Day 8 at 19-20).

48. Prior to August 1999, the FTC staff had not proposed any significant divestitures. (Tr. Day 8 at 12-13, 18).

49. In August 1999, the FTC staff advised Exxon and Mobil for the first time that it would recommend to the FTC Commissioners that the FTC not oppose the merger if Exxon divested all Exxon gas stations on the East Coast from Virginia to Maine. (Tr. Day 8 at 18-19). The magnitude of the divestitures suggested by the FTC staff surprised the Remedies Team as it went far beyond what the FTC had required in the BP-Amoco merger and the Shell-Texaco joint venture. (Tr. Day 8 at 20-21).

50. The FTC staff did not state that its recommendation to the Commissioners

would include the divestiture of the entire marketing organization (including employees) that supported the Exxon service stations. Nor did the FTC staff communicate that their recommendation would include a requirement that the marketing assets be sold as an ongoing business to a buyer that had a certain level of experience and financial resources. (Tr. Day 8 at 21- 22).

51. In early September 1999, the FTC staff advised for the first time that it would be willing to recommend to the FTC Commissioners a remedy requiring Mobil to divest Mobil gas stations in the mid-Atlantic states, and Exxon to divest all of its gas stations in the Northeastern states. The FTC staff also advised the Remedies Team for the first time that it would recommend to the FTC Commissioners that Exxon and Mobil divest their respective marketing operations in their entirety for the relevant areas. The FTC staff further advised the Remedies Team at that time that Exxon and Mobil must make employees in the divested businesses available to the buyer. As of this time, neither Exxon nor Mobil senior executives had agreed to this proposal; nor had the FTC Commissioners agreed that these terms would be acceptable. (Tr. Day 8 at 21-25, 30-31).

52. The FTC Staff and the Remedies Team also utilized a new concept called a "hold separate business" as a proposed solution to the FTC Commissioners' concern that all required divestitures occur before the Commissioners vote on the merger. (Tr. Day 8 at 36-37). The "hold separate business" was the result of Mobil and Exxon compromising with the FTC to avoid having to divest the assets before the FTC voted on the merger. (Tr. Day 8 at 57). The alternative to running the "hold separate business" was "to hold the whole merger up until every asset had been sold." (Tr. Day 3 at 87). If the companies failed to comply with the terms of the

agreement, they were subject to civil penalties. (Trial Exs. P-31 and P-61; Tr. Day 8 at 57).

53. The "hold separate business" was effectively "a totally separate company." (Tr. Day 3 at 87-88).

54. In late November 1999, the FTC staff indicated for the first time that it would support Tosco as a potential purchaser for the assets that were required to be divested. (Tr. Day 8 at 33-34).

55. In late November 1999, Mobil CEO Noto and Exxon CEO Raymond met with the FTC Commissioners. (Tr. Day 8 at 35).

56. Exxon and Mobil expressed for the first time their agreement to the divestitures proposed by the FTC staff, and it became apparent that the FTC Commissioners would not oppose the merger. The FTC Commissioners also made clear that they would vote on the merger before the agreed-upon divestitures were completed in accordance with the "hold separate business" concept discussed between the Remedies Team and the FTC staff. (Tr. Day 8 at 35).

57. On November 30, 1999, the FTC conditionally approved the merger, subject to public comment and further FTC review. (Tr. Day 8 at 36, 42-43). The FTC voted not to oppose the acquisition of Mobil by Exxon and required, for competitive reasons, significant divestitures of certain Mobil business unit assets. (Trial Ex. P-31).

58. Exxon Mobil was created on December 1, 1999. (Tr. Day 1 at 99). Under the terms of the merger, Exxon covenanted that the surviving company would honor all Mobil benefit plans. The Administrator of Benefits for Exxon became the Administrator for the CIC

Plan. (Trial Ex. P-6 at 10530; Defs.' First Am. Answer and Affirmative Defenses [Doc. No. 27] ¶ 4; Stipulation of Facts ¶ 52).

59. Also, on December 1, 1999, Mobil executed an agreement of sale of the Mid-Atlantic Marketing assets to Tosco. (Tr. Day 8 at 39- 40; Trial Ex. D-79). Under the terms of the agreement of sale, Tosco had the right to interview employees and decide which employees, if any, it wished to hire. The sale agreement did not require Tosco to hire any of Mobil's employees. (D-79 § 18.1).

60. On the evening of December 1, 1999, Baker, who had been named to run the "hold separate business," negotiated with Thomas O'Malley, Chairman of Tosco, to offer jobs to all employees of the Mid-Atlantic Marketing Assets division. After several hours of negotiations regarding a number of issues, O'Malley agreed to offer jobs to all employees with comparable or improved salaries and benefits. (Tr. Day 3 at. 91-94).

61. Prior to learning whether Tosco would offer comparable employment to all employees, Mobil management was unable to take a position with respect to Plaintiffs' eligibility for enhanced severance benefits. Until Baker completed his negotiations with Tosco, Mobil was prepared to advise Plaintiffs that it was unknown whether they would receive severance benefits even if they were offered employment with Tosco. (Tr. Day 8 at 87-90).

62. On or about December 1, 1999, shortly before the announcement of the divestiture to Tosco, Jim Melvin, the Manager of Mobil's Penn-Jersey district, questioned Robert Amrhein, Vice President of Human Resources for Mobil, whether divested employees would be eligible for severance benefits. Amrhein told Melvin he believed that it depended on whether

employees were offered comparable employment. After Melvin pointed out that the SPD did not address the situation, Amrhein contacted Mobil Attorney Davies. (Tr. Day 3 at 49-50; Tr. Day 7 at 109-110).

63. Although Davies believed that there was an express reference to a divestiture event in the SPD, after reviewing the document he realized that it did not include specific language about divestitures. Davies confirmed to Amrhein his belief that because the employees were being offered comparable employment with a divested business unit, they were ineligible under the express terms of the CIC Plan. Davies also sent Amrhein copies of the Q & As that had been posted on the website so that Amrhein could demonstrate to employees that the divestiture provision was not a new amendment to the CIC Plan. (Tr. Day 7 at 109-110).

64. On December 2, 1999, the day after the agreement with Tosco was executed and two days after the FTC Commissioners voted not to oppose the merger, Mobil announced that its Mid-Atlantic Marketing Assets division (in which all Plaintiffs were employed) would be totally divested to Tosco. (Tr. Day 1 at 53, 55). Plaintiffs' Mobil employment was constructively terminated on December 2, 1999.

65. At the employee meetings on December 2, 1999, Baker explained his personal efforts to ensure that all employees obtained comparable employment with Tosco. (Tr. Day 1 at 55-57). Amrhein and Baker were pleased to be able to deliver what, in their opinion, was good news. (Tr. Day 3 at 92-93).

66. At the same meeting on December 2, 1999, Amrhein and Baker advised the

Tier 4 employees that they would not be receiving severance benefits because they were being offered comparable employment with Tosco. (Tr. Day 3 at 59-66; 104-06).

67. At a subsequent meeting on December 15, 1999, Plaintiffs expressed displeasure that they were not going to receive severance benefits and claimed that Mobil had changed the terms of the CIC Plan. At some point, Amrhein distributed copies of the relevant Q & As from the Intranet website as well as the actual CIC Plan text reflecting the divestiture provision. These documents showed that the terms of the CIC Plan remained unchanged from the outset. (Tr. Day 1 at 62-64; Tr. Day 3 at 65; Tr. Ex. D-14).

68. In February 2000, Mobil distributed an Errata to the SPD, which clearly and accurately referred to the divestiture provision. It provided as follows:

> ERRATA
>
> The following text was omitted from the Mobil Corporation Employee Severance plan Summary for U.S. employees in salary groups 19 and below, distributed to all employees in those salary groups in August, 1999. Please keep this with your Summary for future reference.
>
> This bullet belongs on page 5 and should be included as an additional reason one is not eligible to participate in the CIC retention/severance package:
>
> - ■ you are no longer employed by the Company or an Affiliate due to a divestiture of any facility or sale or outsourcing of any business and are offered comparable employment by the purchaser or successor of such facility or business, regardless of whether you accept or reject the employment.

(Trial Ex. P-13).

69. Each of the Plaintiffs were offered employment with Tosco[4] on comparable terms to their employment with Mobil. With the exception of Shelly Sharer, all testifying Plaintiffs accepted Tosco's employment offer. (Tr. Day 2 at 69; Tr. Day 5 at. 97). Sharer opted not to accept a position with Tosco to spend more time with her family. (Joint Stipulations, ¶ 62; Tr. Day 4 at 65). After the divestiture to Tosco, Plaintiffs received the same salaries and benefits, and generally reported to the same supervisors to whom they reported immediately before the divestiture. (Tr. Day 1 at 84, 168-69; Tr. Day 2 at 26, 70; Tr. Day 4 at 36-37; Tr. Day 5 at 7-12. 51-52, 95).

70. No Plaintiff who accepted a position with Tosco missed any work between the date he or she left Mobil and the date he or she began working for Tosco. (Tr. Day at 84-85; Tr. Day 2, at 28, 75; Tr. Day 5 at 54). Moreover, there was no break in any Plaintiffs' health care coverage from the date he or she left Mobil until he or she started at Tosco. (Tr. Day 1 at 85; Tr. Day 2 at 28, 75; Tr. Day 4 at. 38, 54; Tr. Day 5 at 96).

71. The change in control occurred on November 30, 1999. (Tr. Day 3, 30).

72. Plaintiffs' Mobil employment was terminated between March and May 2000.

73. Most of the Plaintiffs were divested effective March 1, 2000, while others were not divested until May 2000. (Stipulation of Facts ¶ 65).

74. Prior to December 1999, Mobil employees (except for a few executives) did

[4] Within a year, Plaintiffs' units were acquired by Philips Petroleum, which thereafter merged with Conoco to form Conoco Philips. At the time of trial, Conoco Philips had announced that these units would be sold to an unidentified purchaser.

not know (1) if they were going to be offered employment after the merger, (2) what positions, if any, they would be offered, (3) where the positions would be located, (4) the salary for the position, (5) the supervisor for the position, (6) whether they would be working with the same co-workers, or (7) what it would be like to work for their new employer. (Tr. Day 3 at 174-76; Tr. Day 7 at 181-82, 190).

75. Plaintiffs stayed with Mobil through December 1999 for the opportunity to work for Exxon Mobil--not to collect enhanced severance benefits. (Tr. Day 1 at 141, 177; Tr. Day 4 at 98; Tr. Day 5 at 70; Tr. Day 5 at 114). No Plaintiff proved that he or she did anything in reliance upon the understanding that he or she would receive enhanced severance benefits in the event of a divestiture. No Plaintiff turned down any specific job offer in reliance on the belief that he or she would receive severance benefits in the event of a divestiture. (Tr. Day 1 at 133, 136; Tr. Day 2 at 17; Tr. Day 2 at 57-58; Tr. Day 4 at 12-13; Tr. Day 5 at 70).

76. Plaintiffs did not actively seek alternative employment upon learning of the divestiture to Tosco and their purported ineligibility for severance benefits. (Tr. Day 1 at 107; Tr. Day 1 at 118-19, 172; Tr. Day 2 at 36, 96, 192; Tr. Day 4 at 48- 49, 123-24, Tr. Day 5 at 67, 103).

77. John Troy and Joanne Lima were the only two Plaintiffs who submitted internal appeals to the CIC Plan Administrator. (Tr. Day 1 at. 120). However, their claims for benefits were predicated upon arguments that they did not receive comparable employment with Tosco. None of the other Plaintiffs exhausted their administrative remedies on their claims for severance benefits because management clearly and unequivocally represented to Plaintiffs in

December 1999 that they were ineligible for benefits due to the disclaiming language in the SPD and the controlling language in the CIC Plan.

78. On January 26, 2001, the FTC issued its Final Order approving the merger. (Tr. Day 8 at 43; Trial Ex. P-27 at D10638).

DISCUSSION

ERISA was "enacted 'to protect contractually defined benefits.'" Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101, 113 (1989). Full disclosure of employee benefits "permits employees to bargain further or seek other employment if they are dissatisfied with their benefits." Hamilton v. Air Jamaica, Ltd., 945 F.2d 74, 78 (3d Cir. 1991). ERISA preempts any and all state laws insofar as they relate to any employee benefit plan. 29 U.S.C. § 1144(a). "[B]y preempting any law that even relates to ERISA plans Congress anticipated the development of a 'federal common law of rights and obligations under ERISA-regulated plans.'" McGurl v. Trucking Employees of North Jersey Welfare Fund, Inc., 124 F.3d 471, 481 (3d Cir. 1997).

ERISA has "an elaborate scheme in place for enabling beneficiaries to learn their rights and obligations at any time, a scheme that is built around reliance on the face of written plan documents." Curtiss-Wright Corp. v. Schoonejongen, 514 U.S. 73, 83 (1995). "Among the required documents, one of the most important is the [summary plan description] provided to plan beneficiaries. The importance of [summary plan descriptions] stems from their role in the ERISA scheme as the *primary* informational document issued to plan beneficiaries to inform them of their rights and obligations under a plan." Local 56, United Food and Comm. Workers Union v. Campbell Soup Co., 898 F. Supp 1118, 1130 (D.N.J. 1995). The contents of a summary plan description and the language used to communicate the contents are carefully prescribed by statute and regulation. 29 U.S.C. §§ 1021-24; 29 C.F.R. § 2520.102-3(l). "Summary plan descriptions must warn employees of adversity." Alexander v. Primerica Holdings, Inc., 967 F.2d 90, 94 (3d Cir. 1992). The summary plan description must contain a description of the "circumstances which may result in disqualification, ineligibility, or denial or loss of benefits." 29 U.S.C. § 1022(b). Finally, a summary plan description must "not have the effect of misleading, misinforming or failing to inform participants . . . with respect to pertinent provisions of the plan." 29 C.F.R. § 2520.102-2(b). An ERISA plan administrator (a fiduciary) is responsible for providing a timely and accurate summary plan description to employees covered by the employee benefit plan. 29 U.S.C. §§ 1021, 1022, 1024. "[A] fiduciary may satisfy its statutory disclosure obligations regarding the terms of a plan by distributing a summary plan description that complies with ERISA." In re Unisys Corp. Retiree Med. Benefit "ERISA" Litig., 57 F.3d 1255, 1264 (3d Cir. 1995).

The importance of ERISA summary plan descriptions was recently highlighted by the Third Circuit's decision in Burstein v. Retirement Account Plan for Employees of Allegheny Health Educ. and Research Fund, 334 F.3d 365 (3d Cir. 2003). In that case, the plaintiffs were former employees of Allegheny Health Education and Research Foundation (hereinafter "AHERF"), some of whom became employees of Tenet Healthcare when Tenet purchased part of AHERF's assets. The plaintiffs alleged that the language in both the plan brochure and a summary plan description conveyed the impression that each participant had a funded account in which retirement benefits were being accrued. The summary plan description stated that "if the Plan is terminated, you will become vested in your account, regardless of how many years of service you have earned." Id. at 383. However, the Plan provided that upon termination, non-vested participants' benefits would become nonforfeitable only to the extent they were funded on the date of termination. Id. at 385 n.30. Plaintiffs pursued claims for the denial of plan benefits pursuant to § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), equitable estoppel, and breach of fiduciary duty under § 502(a)(3)(B), 29 U.S.C. § 1132(a)(3)(B).

Reversing an order granting the defendants' motion to dismiss all claims on the ground that benefits cannot become due under a summary plan, the Third Circuit ruled that the plaintiffs may be entitled to benefits under § 502(a)(1)(B). The Burstein court ruled that where there is a conflict between a plan document and a summary plan description, the summary plan description governs. The Burstein court emphasized that 29 U.S.C. § 1022(a) reflects Congress's desire that the summary plan description be transparent, accurate and comprehensive. Id. at 378.

Following Sixth Circuit precedent, the Burstein court further held that a plan participant who sought benefits based upon a conflict between a summary plan description and plan did not have to prove reliance upon the summary plan description in order to show that benefits were improperly denied under § 502(a)(1)(B). Id. at 381 (citing Edwards v. State Farm Mut. Auto. Ins., 851 F.2d 134 (6th Cir. 1988)). "Claims for ERISA plan benefits under ERISA § 502(a)(1)(B) are contractual in nature. . . . In interpreting plan terms for purposes of [denial of benefits] claims, we apply a federal common law of contract, informed both by general principles of contract law and by ERISA's purposes as manifested in its specific provisions." Id. "[J]ust as a court's enforcement of a contract generally does not require proof that the parties to the contract actually read, and therefore relied upon, the particular terms of the contract, we are persuaded that enforcement of [a summary plan description's] terms under a claim for plan benefits does not require a showing of reliance." Id. Thus, a plan participant who bases a claim for plan benefits on a conflict between a summary plan description and plan document need not establish reliance upon the summary plan description. Id. While the Burstein court held that reliance was an unnecessary element in a § 502(a)(1)(B) claim--which is contractual in nature--the Third Circuit emphasized that detrimental reliance must be established to support claims for breach of fiduciary and equitable estoppel. Id. at 383, 387.

The Court will address below each of Plaintiffs' four claims in the case at bar.

1. Breach of Fiduciary Duty Claims

Plaintiffs advance a breach of fiduciary duty claim in Count I of their Second Amended Complaint. This claim is premised upon Defendants' failure to inform them of the divestiture provision in the SPD and Defendants' misleading communications about the CIC Plan beginning in December 1998.

The duty to inform is a constant thread in the relationship between a beneficiary and a trustee. It entails not only a negative duty not to misinform, but also an affirmative duty to inform when the trustee knows silence might be harmful. Bixler v. Central Pa. Teamsters Health & Welfare Fund, 12 F.3d 1292, 1300 (3d Cir. 1993). "When a plan administrator affirmatively misrepresents the terms of a plan or fails to provide information when it knows that its failure to do so might cause harm, the plan administrator has breached its fiduciary duty to individual plan participants and beneficiaries." In Re Unysis Corp., 57 F.3d at 1264. What is stated "as well as what was left unstated" may be relevant in determining whether a breach of fiduciary duty has occurred. In Re Unysis Savings Plan Litig. 74 F.3d 429, 443 (3d Cir. 1996).

To establish a claim for breach of fiduciary duty, a plaintiff must prove: (1) the defendant's status as an ERISA fiduciary; (2) a misrepresentation on the part of the defendant; (3) the materiality of that misrepresentation; and (4) detrimental reliance by the plaintiff on that misrepresentation. Daniels v. Thomas Betts Corp., 263 F.3d 66, 73 (3d Cir. 2001). Detrimental reliance is a necessary element of breach of fiduciary claims based upon misrepresentation. Burstein, 334 F.3d at 387.

Plaintiffs contend that the omission in the SPD regarding the divestiture ineligibility was a material non-disclosure, and the ineligibility provision clearly should have been included in the SPD pursuant to 29 U.S.C. § 1022(b). Plaintiffs also contend that communications made through Noto, Amrhein, Baker and other members of Mobil management were made to purposely mislead Plaintiffs into believing that they would be entitled to benefits should they not obtain a position with Exxon Mobil.

Assuming *arguendo* that these Mobil representatives were acting in a fiduciary capacity,[5] Plaintiffs have established that Defendants failed to adequately inform participants of the terms of the CIC Plan by not informing Plaintiffs of the divestiture provision. Ineligibility due to divestiture was a significant provision that should have been communicated to Plaintiffs at the informational meetings and clearly should have been included in the SPD. A term of eligibility is material to those employees covered by the plan. Had Plaintiffs known about the divestiture provision, they would have been able to make informed decisions about their ongoing employment with Mobil.

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[5] Defendants acknowledge that they acted in a fiduciary capacity when they disseminated the SPD. However, Defendants contend that the oral and other informal statements about severance benefits made by Mobil management were not made by those acting in a fiduciary capacity.

ERISA "defines 'fiduciary' not in terms of formal trusteeship, but in functional terms of control and authority over the plan." Burstein, 334 F.3d at 384 (quoting Mertens v. Hewitt Associates, 508 U.S. 248, 262 (1993)). A person is a fiduciary when he or she has any "discretionary responsibility" in the administration of a plan. Id. (quoting Varity Corp. v. Howe, 516 U.S. 489, 527 (1996)). In the case at bar, Plaintiffs allege that Mobil management, such as Amrhein, are co-fiduciaries. In the SPD, the Vice President of Human Resources (Amrhein) is identified as the plan administrator. (Trial Ex. P-12 at D13180; Tr. Day 3 at 13). Because the Court rules that Plaintiffs have failed to make out a breach of fiduciary duty claim due to their failure to prove detrimental reliance, it is unnecessary to fully consider this issue.

However, Plaintiffs failed to show that they detrimentally relied upon the representations of Mobil management or the SPD. While the Tier 4 employees may have believed that they would be entitled to enhanced severance benefits based upon the eligibility requirements set forth in the SPD and by the assurances of Mobil management, they did not maintain their employment with Mobil or fail to seek alternative employment because of this omission. Rather, the Tier 4 employees stayed with Mobil because they understandably were excited about the prospect of working for what would be the world's largest oil company. See Pane v. RCA Corp., 868 F.2d 631, 638 (3d Cir. 1989) (noting that continued employment is insufficient to support a claim of detrimental reliance). Because Plaintiffs failed to prove detrimental reliance, the Court enters judgment in favor of Defendants on the breach of fiduciary duty claims pleaded in Count I of the Amended Complaint.

2. Equitable Estoppel Claims

ERISA authorizes claims for equitable estoppel. Curcio v. John Hancock Mut. Life Ins. Co., 33 F.3d 226, 235 (3d Cir. 1994). In order to prevail on an equitable estoppel claim, a plaintiff must establish (1) a material misrepresentation; (2) reasonable and detrimental reliance; and (3) extraordinary circumstances. Id. at 235-36. "Extraordinary circumstances" generally involve "acts of bad faith on the part of the employer, attempts to actively conceal a significant change in the plan, or commissions of fraud." Burstein, 334 F.3d at 383 (citing Jordan v. Federal Express Corp., 116 F.3d 1005, 1011 (3d Cir. 1997)).

Although the failure to reference the divestiture provision in the SPD rendered it materially inaccurate and inconsistent with the actual plan, detrimental reliance and extraordinary circumstances are lacking in this case. During the trial, none of the Plaintiffs presented any evidence that they turned down more lucrative offers of employment elsewhere because of their belief that they would be entitled to the severance benefits. Additionally, Plaintiffs failed to prove that any misinformation, orally or in the SPD, was the result of a campaign to conceal the actual terms of the CIC Plan from Tier 4 employees. In fact, Plaintiffs failed to establish that Defendants possessed knowledge of Plaintiffs' confusion on the issue. While the fiduciaries failed to include the eligibility and ineligibility terms in the SPD, the Court finds that this failure is one of inartful drafting, not fraud or active concealment. It was not an underhanded effort to retain employees who might otherwise seek employment with competitors. This conclusion is supported not only by the fact that earlier drafts of the SPD included the divestiture provision, but through Mobil's promptly posting a summary that referenced the divestiture provision on its Intranet site, shortly after the merger was announced.

Due to Plaintiffs' failure to prove detrimental reliance and extraordinary circumstances, judgment is entered in favor of Defendants and against Plaintiffs on the equitable estoppel claims.

3. Federal Common Law Breach of Contract Claims

In Count III, Plaintiffs advance a claim for breach of contract for vested severance benefits. Although Defendants argue that Plaintiffs cannot maintain a breach of contract claim under ERISA as a matter of law, this Court found otherwise in a previous ruling. See Hooven v. Exxon Mobil Corp, No. 00-CV-5071, 2001 WL 793275, at *1, 2001 U.S. Dist. LEXIS 9819, at *4-5 (E.D. Pa. July 12, 2001) ("A claim for breach of contract can be maintained under

ERISA.").[6] This ruling constitutes the law of the case. Because no "extraordinary circumstances" exist that might warrant reconsideration of this issue, the Court's prior ruling controls. Pub. Interest Research Group of N.J., Inc. v. Magnesium Elektron, Inc., 123 F.3d 111, 116-17 (3d Cir. 1997) (courts must "refrain from re-deciding issues that were resolved earlier in the litigation" absent "new evidence," "supervening new law" or a "clearly erroneous" decision).

The CIC Plan is an "employee welfare benefit plan" under ERISA. See 29 U.S.C. § 1002(1); cf. Amatuzio v. Gandalf Sys. Corp., 994 F. Supp. 253, 264-65 (D.N.J. 1998) ("Almost all severance policies are ERISA-covered welfare benefit plans as they are included by reference in ERISA's definition of 'employee welfare benefit plan.'"). While ERISA does not *require* automatic vesting of employee welfare benefit plans, "[i]t is well settled that nothing in ERISA prevents an employer from providing vested employee welfare benefits by contract." Id. at 265 (citations omitted); see Kemmerer v. ICI Americas Inc., 70 F.3d 281, 287 (3d Cir. 1995); Bruch v. Firestone Tire and Rubber Co., 828 F.2d 134, 145-47 (3d Cir. 1987) (explaining that severance benefits offered as an inducement to continue working create a unilateral contract), aff'd in part and rev'd in part on other grounds, 489 U.S. 101 (1989).

Plaintiffs allege that their contractual right to severance benefits vested on November 30, 1999, when the FTC conditionally approved the merger. Plaintiffs contend that through the SPD Defendants offered them an enhanced severance/retention plan providing that if their employment with Mobil was terminated and they did not obtain a comparable position with

[6] By Order dated June 14, 2002, this case was randomly reassigned from the calendar of the Honorable James McGirr Kelly to the calendar of the undersigned.

the combined company following the merger, then they would be entitled to severance benefits. Plaintiffs assert they accepted this offer by continuing to work for Mobil through the change in control, thus creating a unilateral contract. They further note that both the SPD and the CIC Plan provided that the plan could not be terminated or amended within two years after a change in control.

Defendants counter that there is no conflict between the CIC Plan and the SPD, so the CIC Plan controls. This argument is premised on Defendants' contention that the CIC Plan merely "fills in" an omission in the SPD. In the alternative, Defendants assert that even if the documents conflict and the SPD controls, Plaintiffs would not be entitled to severance benefits until they were terminated (i.e., divested) from Mobil, and that Mobil was entitled to correct the SPD and thereby modify Plaintiffs' rights prior to divestiture. Defendants also contend that both the SPD and the CIC Plan specifically required that administrative remedies be exhausted before any employee may advance a claim for benefits under the CIC Plan.

Where an employer offers a severance benefit plan to its employees as an inducement for them to remain with the company despite an uncertain future, and the employees accept the offer by continuing to work for the employer, a unilateral contract is formed because the employees accept the offer by performance instead of by return promise. Amatuzio, 994 F. Supp. at 265-66 ("Severance plans adopted to encourage employees to stay with their employer, and severance plans awarding severance based on length of service, are unilateral contracts, regardless of whether they are the product of negotiations between employer and employees."); Taylor v. Cont'l Group Change in Control Severance Pay Plan, 933 F.2d 1227, 1232 (3d Cir.

1991) (explaining that the plan at issue was adopted "to encourage employees to stay with [the employer] despite an impending takeover . . . [S]uch severance plans are in essence unilateral contracts"). "Under unilateral contract principles, once the employee performs, the offer becomes irrevocable, the contract is completed, and the employer is required to comply with its side of the bargain." Kemmerer, 70 F.3d at 287; Amatuzio, 994 F. Supp. at 267.

To determine whether a unilateral contract was formed, the Court must identify "objective manifestations of contractual intent," beginning with the plan documents. Amatuzio, 994 F. Supp. at 269; see In re Unisys Corp. Retiree Med. Benefit ERISA Litig., 58 F.3d 896, 902 (3d Cir. 1995) ("ERISA's framework ensures that employee benefit plans be governed by written documents and summary plan descriptions, which are the statutorily established means of informing participants and beneficiaries of the terms of their plan and its benefits."); Taylor, 933 F.2d at 1232; Fallo v. Piccadilly Cafeterias, Inc., 141 F.3d 580, 583 (5th Cir. 1998) ("SPD most nearly represents the intention of the parties"). After Burstein, 334 F.3d at 378, if the SPD and the CIC Plan conflict, the SPD controls. In those circumstances, the SPD is the best objective manifestation of contractual intent.

Here, the SPD provided that Tier 4 employees would be entitled to benefits if their employment was terminated by the Company within two years after the change in control. The CIC Plan contained a similar provision, but it also contained an ineligibility provision that applied to Tier 4 employees who are no longer employed by Mobil as the result of a divestiture and are offered comparable employment with the purchaser or successor.

Given these discrepancies, the Court must first address whether the CIC Plan and the August 1999 SPD conflict. Defendants maintain that they do not and that the failure to include the divestiture provision was a mere omission. The general rule is that when an SPD simply omits rather than contradicts plan details, the plan will govern. Sprague v. Gen. Motors Corp., 133 F.3d 388, 401 (6th Cir. 1998). However, where an actual conflict exists between the SPD and the Plan, the SPD controls. Burstein, 334 F.3d at 378; see also id. at n.18 (citing other circuits holding same).

In this case, the discrepancy cannot be characterized as a mere omission. The SPD contained language that Tier 4 employees would be entitled to benefits if terminated provided they "did not decline a position after the CIC" that involves a cut in total annual pay or a job move of more than 50 miles. A reasonable person would construe this language to apply to employees who were terminated by Mobil and who were not offered comparable employment *with the merged company*. Importantly, this same language ("decline a position after the CIC") regarding comparable employment was used in the SPD for employees in grades 20 and higher who under the CIC Plan *were* eligible for benefits, even if they were offered comparable employment with an acquiring company.[7] By not including the divestiture ineligibility provision, the SPD offered Tier 4 employees a similar entitlement to severance benefits as Tier 1, 2 and 3 employees.

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[7] The SPD for employees in salary groups 20 and up provided for ineligibility when:

- you decline a position offered after the CIC that does not involve:
  - – a job with less responsibility,
  - – a cut in your annual base pay,
  - – a cut in your target annual short term incentive compensation opportunity, or
  - – a job move of at least 50 miles.

Trial Ex. P-34 at D10189.

While the SPD controls over the Plan, the same is not true for employer-prepared summaries that have no footing in ERISA. Under ERISA, the form of communication must be reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries. 29 C.F.R. § 2520.104b-1(b). Based upon the trial record, the Intranet was not a sufficient manner of communicating with Mobil employees about their ERISA benefits because not all employees were comfortable using or had access to the Intranet.

One reviewing the SPD for employees in salary grades 19 and below would reasonably expect that Mobil intended to offer severance benefits, notwithstanding a divestiture. Because of the contradictory provisions in the SPD and the CIC Plan, the CIC Plan is "superseded and modified by conflicting language in the SPD." Burstein, 334 F.3d at 381. Where a plan and an SPD conflict, the provision more favorable to the employee controls. Bergt v. Ret. Plan for Pilots Employed by MarkAir, Inc., 293 F.3d 1139, 1145 (9th Cir. 2002); Chiles v. Ceridian Corp., 95 F.3d 1505, 1518 (10th Cir. 1996). As the Tenth Circuit has explained, because the duty of clarity falls on the plan sponsor,

> [a]ny burden of uncertainty created by careless or inaccurate drafting must be placed on those who do the drafting, and who are most able to bear that burden, and not on the individual employee, who is powerless to affect the drafting of the summary . . . and ill-equipped to bear the financial hardship that might result from a misleading or confusing document. Accuracy is not a lot to ask.

Id. (quoting Hansen, 940 F.2d at 981).

In light of Defendants' obligation to draft an SPD that is clear and that unequivocally differentiates between the eligible and ineligible employee, the Court concludes that the ineligibility phrase "decline a position after the CIC" relates to a position with Exxon

Mobil. This language purports to define *ineligibility*, and therefore must be converse to language in the *eligibility* provision. The SPD provides that Tier 4 employees are eligible for benefits if they are "offered a job by the Company after the change in control but decline it because it [] involves a cut in total annual pay. . . ." (Trial Ex. P-12). While the language in the ineligibility provision does not expressly state that to be ineligible one must be offered and decline a position with the merged company (Exxon Mobil), to read it as rendering employees ineligible if the future offer of employment comes from a purchasing entity or a competitor would be wholly inconsistent with the purpose and goal of severance benefits--to benefit the *current* employer (here, Mobil) by encouraging employee loyalty (to Mobil) even in the face of an uncertain employment future. Because it is, at best, ambiguous, the Court accepts Plaintiffs' reasonable reading of the SPD provision as controlling and as manifesting the parties' contractual intent. Cf. Amatuzio, 994 F. Supp. at 270 (showing defendant intended to be bound by a unilateral contract requires "specific, if not written" expression) (citing Anderson v. John Morrell & Co., 830 F.2d 872, 877 (8th Cir. 1987)). Accordingly a unilateral contract existed.

Support for this conclusion is not limited to the SPD alone. When the ambiguous language is considered in conjunction with the repeated suggestions of Mobil management, Plaintiffs' belief that Defendants intended to offer them severance if they did not obtain a position with Exxon Mobil is even more reasonable. Significantly, the SPD for salary grades 20 and higher (Tier 1, 2 and 3 employees) contained the "decline a position offered after the CIC" language, even though the SPD for grades 20 and higher was intended to convey to those employees that they would be eligible for enhanced severance benefits in the event of divestiture. Baker and Davies both testified at trial that it was not unreasonable for Tier 4 employees, after reading the SPD alone, to believe that they would be eligible for severance benefits if they were offered comparable employment with the purchaser of the divested assets. (Tr. Day 3 at 127; Tr. Day 7 at 169-71).

Accordingly, Plaintiffs are not bound by the CIC Plan divestiture provision, which Defendants failed to include in the SPD. To accept Defendants' argument to the contrary would essentially allow employers to generate an incomplete list of "circumstances which may result in disqualification, ineligibility or denial of benefits." That is not permitted by ERISA. See 29 U.S.C. § 1022(a)(1). A summary plan description "is intended to be a document easily interpreted by a layman; an employee should not be required to adopt the skills of a lawyer and parse specific undefined words throughout the entire document to determine whether they are consistently used in the same context." Chiles, 95 F.3d at 1517-18. There is simply no indication in the text of the SPD that Tier 4 employees who are terminated from Mobil but subject to divestiture would be ineligible for enhanced severance benefits. The burden of clarity is on Defendants, and the consequence of inaccurate drafting falls squarely on the employer.

Defendants argue that the Tier 4 employees are ineligible for benefits by operation of disclaimers in the SPD, which state that the CIC Plan governs over the SPD. These disclaimers provide: "If the Plan description in this handbook does not agree with the Plan text, the Plan text will govern," and "This information is a summary of the Plan and does not replace the official Plan documents, which govern in all cases." (Trial Ex. P-12 at D13179, D13181).

If an employee were expected to read the entire plan to obtain an understanding of benefits provided, then there would be no need to provide a summary plan description. See

Burstein, 334 F.3d at 379 (refusing to give effect to language in the SPD that the "[P]lan [D]ocument always governs" in the event of a conflict); Hansen, 940 F.2d at 982 ("[D]rafters of a summary plan description may not disclaim its binding nature."); McKnight v. S. Life & Health Ins. Co., 758 F.2d 1566, 1570 (11th Cir. 1985) ("It is no effect to publish and distribute a plan summary booklet designed to simplify and explain a voluminous and complex document and then proclaim that any inconsistencies will be governed by the Plan."). Accordingly, the Court will not apply the disclaimer language against Plaintiffs under these circumstances.

Plaintiffs contend that their contractual rights as communicated to them in the SPD (and otherwise) vested with the November 30, 1999 change in control. This position is supported by the terms of the SPD, which states that the "CIC retention/severance package will pay benefits only if there is a change in control of Mobil Corporation or any successor company." Accordingly, the change in control is the triggering event upon which Plaintiffs' contractual rights vested. Cf. Wheeler v. Dynamic Eng'g, Inc., 62 F.3d 634, 637-38 (4th Cir. 1995) ("[B]enefits under a welfare plan may vest under the terms of the plan itself."). The SPD defines "change in control" in the merger context as follows: "In the case of the Exxon Mobil merger, the change in control occurs after all regulatory and shareholder approvals are received and the stock of Mobil is exchanged for 1.32015 shares of Exxon Mobil stock for each Mobil share." As set forth in the Court's Findings of Fact ¶¶ 57-60, these conditions were satisfied when the FTC voted not to oppose the merger on November 30, 1999; Exxon Mobil was created on December 1, 1999, and Mobil executed an agreement of sale of the Mid-Atlantic Marketing Assets to Tosco on December 1, 1999. Put plainly, this is when Plaintiffs' employment future materially altered, and their rights vested at that time.

With Mobil's December 2, 1999 announcement, Plaintiffs learned the import of these events; they knew with certainty that they would be divested to Tosco, they would not be working for Exxon Mobil, and they would not be receiving severance benefits--in other words, that Mobil would not perform its obligations under the unilateral contract. In these circumstances, by virtue of Plaintiffs' performance on the unilateral contract, the Court must enforce Defendants' corresponding obligation.[8] Accordingly, because Plaintiffs entered into a unilateral contract with Defendants, they are entitled to receive the severance pay they earned under that contract. Amatuzio, 994 F. Supp. at 267.

The Court also rejects Defendants' argument that they had the right to amend the SPD after the change in control but prior to the divestiture. Here, both the SPD and the CIC Plan imposed burdens on Mobil beyond ERISA's requirements. Both documents provided that the CIC Plan could not be amended or terminated within two years of the change in control. Because by its very terms Defendants could not modify the CIC Plan after a change in control, the February 2000 Errata was incapable of modifying Plaintiffs' rights to severance benefits. See

[8] The Court concludes that Plaintiffs were constructively terminated from Mobil on December 2, 1999, upon being informed that the Mid-Atlantic Marketing Assets division would be divested to Tosco. See Findings of Fact ¶ 64. It should be noted that there was conflicting testimony on whether the "hold separate business" was a separate and distinct legal entity. Baker, who ran the "hold separate business," testified that it was a "totally separate company." (Tr. Day 3 at 87). Other testimony suggested the "hold separate business" remained a part of Mobil but was held separately. (Tr. Day 6 at 37).

Even if placement into the "hold separate business" was not a triggering event (because Plaintiffs continued to perform their same jobs and received paychecks from Mobil), the Court concludes that Plaintiffs had a vested right to severance benefits based upon Mobil's waiver of its right to modify benefits under the CIC Plan for a two-year period following a change in control. By waiving its right to unilaterally modify the CIC Plan for a period of two years following a change in control--a right Defendants could have reserved in the SPD and the CIC Plan--the parties entered into a contractual agreement for the vesting of these benefits. See Barker v. Ceridian Corp., 193 F.3d 976 (8th Cir. 1999). Accordingly, even if Plaintiffs were not terminated from Mobil until March 2000, Mobil manifested its clear intent to waive its right to terminate benefits under the CIC Plan for a two-year period following a change in control. Thus, Plaintiffs' rights were vested as of the November 1999 change in control.

Algie v. RCA Global Communications, Inc., 891 F. Supp. 875, 884 (S.D.N.Y. 1994) ("[O]nce a triggering event occurs that entitles an employee to a specified benefit, the employer is contractually and statutorily obligated to provide that benefit and may not retrospectively amend the plan to divest the plan participant of a payment that he was already entitled to receive."). While the provision not permitting modification constituted an extra-ERISA commitment, Defendants are nevertheless bound by this undertaking and could not have modified the CIC Plan until two years after the change in control, or until November 2001. Plaintiffs received and reviewed the SPD and reasonably believed severance benefits would be forthcoming in the event they were not offered comparable employment with Exxon Mobil. See Hamilton v. Air Jamaica, Ltd., 750 1259, 1269-70 (E.D. Pa. 1990) (holding that employer was bound to pay according to terms of contract and could not unilaterally amend contract after performance), aff'd in part and rev'd in part on other grounds, 945 F.2d 74 (3d Cir. 1991). The change in control occurred on November 30, 1999. From that point, in accordance with the express terms of the SPD, Defendants were unable to terminate, amend or modify the terms of the unilateral contract for a period of two years.

Finally, the Court rejects Defendants' argument that Plaintiffs failed to exhaust their administrative remedies before advancing a claim for benefits. Throughout the proceedings, Plaintiffs have disavowed § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), and have repeatedly asserted that they are not advancing a claim for denial of benefits. Plaintiffs have also maintained that they are exempt from the exhaustion requirement since seeking administrative remedies would have been futile.

Assuming that exhaustion is required under a unilateral contract theory, see Constantino v. TRW, Inc., 13 F.3d 969, 975 (6th Cir. 1994) (suggesting exhaustion is unnecessary in instances where the issue relates to the legality of a plan, as opposed to its interpretation), exhaustion would have been futile in this case. Plaintiffs proved that Defendants had a “blanket policy denying coverage.” Since December 1999, Amrhein (the CIC Plan Administrator) and other Mobil executives clearly and equivocally told Plaintiffs that they were ineligible for severance benefits due to the divestiture provision in the CIC Plan. (Tr. Day 3 at 55-66, 103-06). Defendants thereafter distributed an Errata to the SPD in February 2000 for the purpose of publishing Mobil’s position that divested employees would be ineligible for severance benefits. Finally, two of the Plaintiffs filed claims for benefits, and both were denied severance pay based upon the divestiture provisions. (Trial Exs. P-20, P-21, P-22, P-23, and P-24). Accordingly, Plaintiffs have satisfied the Court that exhaustion would have been futile. See Berger v. Edgewater Steel Co., 911 F.2d 911, 916 (3d Cir.1990) (citing Arnato v. Berhard, 618 F.2d 559, 568 (9th Cir. 1980)).

4. ERISA Reporting and Disclosure Violations

Finally, Plaintiffs assert that they are entitled to equitable remedies due to the violation of reporting requirements under ERISA § 502(c)(1), which provides:

> Any administrator . . . who fails or refuses to comply with a request for any information which such administrator is required by this subchapter to furnish to a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address for the requesting participant or beneficiary within 30 days after such request may in the court’s discretion be

> personally liable for a penalty of up to $100 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

29 U.S.C. § 1132(c).

It is undisputed that Plaintiffs never requested plan documentation from the Plan Administrator. In order to be entitled to a substantive remedy under § 502(c), Plaintiffs must establish extraordinary circumstances. Ackerman v. Warnaco, Inc., 55 F.3d 117, 124 (3d Cir. 1995). As noted above, extraordinary circumstances generally involve acts of bad faith on the part of the employer, attempts to actively conceal, or fraud. Id. at 125; Kurz v. Philadelphia Elec. Co., 96 F.3d 1544, 1553 (3d Cir. 1996). The Third Circuit has consistently rejected claims for substantive remedies "based on simple ERISA reporting errors or disclosure violations, such as a variation between a plan summary and the plan itself, or an omission in the disclosure documents." Id.

While the Court finds that the SPD and the CIC Plan conflict and that the SPD was not sufficiently accurate under 29 U.S.C. § 1022(a), a penalty under 29 U.S.C. § 1132(c) is inappropriate.

CONCLUSIONS OF LAW

1. Plaintiffs failed to establish breach of fiduciary duty claims under ERISA because they failed to prove detrimental reliance upon the terms of the SPD.

2. Plaintiffs failed to establish equitable estoppel claims because they failed to prove detrimental reliance upon the terms of the SPD and to prove extraordinary circumstances.

3. Plaintiffs have proved the existence of a unilateral contract that obligated Defendants to provide Plaintiffs with enhanced severance benefits in the event that they were terminated following a change in control, which occurred on November 30, 1999.

4. Under the terms of the SPD and the CIC Plan, Defendants could not amend or modify Plaintiffs' entitlement to severance benefits for a period of two years after the change in control.

5. Plaintiffs have proved that pursuing administrative remedies would have been an exercise in futility.

6. The failure to draft a clear and accurate SPD does not serve as a sufficient basis for a penalties under 29 U.S.C. § 1132(c), and Plaintiffs have not proved the existence of extraordinary circumstances that may entitle them to substantive relief.

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

JOE A. HOOVEN, MICHAEL AVERSANO, AINARS BLUSS, T.B. BOTTOLFSON, D.R. CLARIZIO, STAN CONLEY, E. CHRISTINE COPLEY, EDMUND E. DAVIS, SR., PAUL E. DOXEY, JACK F. DUNLEAVEY, CHRISTOPHER G. GIBSON, ROGER A. HENDLER, J.K. HOOVEN, ROMULUS VANCE HOUCK, III, TODD HOWARD, D. HRINAK, J.D. HUMPHREYS, E. JACKSON H.J. KLEIN, A.R. KLINE, R.J. KOPCHA, FRANKLIN W. LEE, R.E. LITTLE, JOANNE LIMA, J. LUTZ, E.T. McMURPHY, S.A. MEDOLIA, STEVE MERCURIO, CLARK D. MILLER, MICHAEL L. MILLMAN, G.A. MILNE, DANIEL G. MOORE, B.L. MORGAN, P.S. POROHNAVI, PATRICIA V. ROSE, JEAN VALENZA-RUBINO, SHELLY C. SHARER, JAMES R. SLUSHER, M.W. STUMP, D.M. SULLIVAN, LINDA N. SUTPHIN, DARREL R. RAYLOR, THOMAS P. THOMPSON, JOHN TROY, DONALD A. TWELE, CARROLL S. WAGNER, LAURA WAKS, JOE D. WOODWARD, JOHN H. WOOLFOLK, L. YOUNG, SUZANNE MICHAUD, and WILLIAM HELFRICH	:	**No. 00-CV-5071**
	:	
v.	:	
	:	
EXXON MOBIL CORPORATION and MOBIL	:	

CORPORATION EMPLOYEE SEVERANCE :
PLAN :

O R D E R

AND NOW, this 31st day of March, 2004, in accordance with the foregoing Memorandum Opinion, it is hereby ORDERED as follows:

(1) **Judgment is entered in favor of Defendants** Exxon Mobil Corporation and Mobil Corporation Employee Severance Plan **and against Plaintiffs** Joe A. Hooven, Michael Aversano, Ainars Bluss, T.B. Bottolfson, D.R. Clarizio, Stan Conley, E. Christine Copley, Edmund E. Davis, Sr., Paul E. Doxey, Jack F. Dunleavey, Christopher G. Gibson, Roger A. Hendler, J.K. Hooven, Romulus Vance Houck, III, Todd Howard, D. Hrinak, J.D. Humphreys, E. Jackson, H.J. Klein, A.R. Kline, R.J. Kopcha, Franklin W. Lee, R.E. Little, Joanne Lima, J. Lutz, E.T. McMurphy, S.A. Medolia, Steve Mercurio, Clark D. Miller, Michael L. Millman, G.A. Milne, Daniel G. Moore, B.L. Morgan, P.S. Porohnavi, Patricia V. Rose, Jean Valenza-Rubino, Shelly C. Sharer, James R. Slusher, M.W. Stump, D.M. Sullivan, Linda N. Sutphin, Darrel R. Raylor, Thomas P. Thompson, John Troy, Donald A. Twele, Carroll S. Wagner, Laura Waks, Joe D. Woodward, John H. Woolfolk, L. Young, Suzanne Michaud, and William J. Helfrich **on Counts I, II, and IV of the Second Amended Complaint.**

(2) **Judgment is entered in favor of Plaintiffs** Joe A. Hooven, Michael Aversano, Ainars Bluss, T.B. Bottolfson, D.R. Clarizio, Stan Conley, E. Christine Copley, Edmund E. Davis, Sr., Paul E. Doxey, Jack F. Dunleavey, Christopher G. Gibson, Roger A. Hendler, J.K. Hooven, Romulus Vance Houck, III, Todd Howard, D. Hrinak, J.D. Humphreys, E. Jackson, H.J. Klein, A.R. Kline, R.J. Kopcha, Franklin W. Lee, R.E. Little, Joanne Lima, J. Lutz, E.T.

McMurphy, S.A. Medolia, Steve Mercurio, Clark D. Miller, Michael L. Millman, G.A. Milne, Daniel G. Moore, B.L. Morgan, P.S. Porohnavi, Patricia V. Rose, Jean Valenza-Rubino, Shelly C. Sharer, James R. Slusher, M.W. Stump, D.M. Sullivan, Linda N. Sutphin, Darrel R. Raylor, Thomas P. Thompson, John Troy, Donald A. Twele, Carroll S. Wagner, Laura Waks, Joe D. Woodward, John H. Woolfolk, L. Young, Suzanne Michaud, and William J. Helfrich **and against Defendants Exxon Mobil Corporation and Mobil Corporation Employee Severance Plan on Count III of the Second Amended Complaint.** Plaintiffs are entitled to enhanced severance benefits upon execution of the Waiver and Release of Claims Agreement attached to the CIC Plan. Defendants are ORDERED to provide severance benefits in accordance with the terms of the SPD and consistent with the foregoing Memorandum Opinion.

(3) The Clerk is directed to CLOSE this case for statistical purposes.

BY THE COURT:

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RUFE, CYNTHIA M., J.