

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BRUCE D. KUNSMAN, et al.,

Plaintiffs,

ORDER

08-CV-6080L

v.

SALLY L. CONKRIGHT, et al.,

Defendants.

This is one of several cases that have come before this Court in recent years involving claims brought under the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. §1101 *et seq.*, by current and former employees of Xerox Corporation, relating to the manner in which plaintiffs’ pension benefits have been calculated.

There are currently three motions pending before the Court: plaintiff Joseph McNeils’ motion for summary judgment and equitable relief (Dkt. #84); the remaining plaintiffs’ motion for summary judgment and injunctive relief (Dkt. #85); and defendants’ cross-motion for summary judgment (Dkt. #89).

On June 25, 2018, the Court issued a Decision and Order (Dkt. #95) staying the action pending the outcome of the appeal before the Court of Appeals for the Second Circuit in *Testa v. Becker*, Ct. App. Dkt. #17-1826. As this Court explained in that decision, many of the issues presented by the pending motions in this case relate directly to some of the issues on appeal in *Testa*.

On December 12, 2018, the Second Circuit issued a decision in *Testa*, in which it affirmed this Court's denial of plaintiff's denial-of-benefits claim, reversed this Court's grant of summary judgment to plaintiff on his breach-of-fiduciary-duty claim, and remanded the case with directions to enter judgment for defendants. 910 F.3d 677. There thus appears to be no reason to continue the stay in this case, or not to decide the pending motions.

Before doing so, however, the Court would like the parties to weigh in with their thoughts about the effect of the Second Circuit's *Testa* decision and what the next steps should be in this case. The Court therefore directs the parties to respond, as set forth in the Conclusion below.

CONCLUSION

The stay entered by the Court on June 25, 2018 (Dkt. #95) is hereby lifted.

No later than two weeks after the date of issuance of this Order, defendants must file a response to this Order, concerning how they believe this Court should proceed in this case in light of the Court of Appeals' recent decision in *Testa v. Becker*, and any other recent relevant case authority. Plaintiff shall file a response no later than two weeks after the date of filing of defendants' submission. Neither side's submission shall exceed ten pages in length.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
April 19, 2019.