

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

AARP, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	2:05-cv-00509-AB
	)	
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	)	
	)	
Defendant.	)	
	)	

**MOTION FOR RELIEF FROM JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 60(b), Defendant Equal Employment Opportunity Commission (“EEOC”) hereby moves for relief from the Court’s Amended Memorandum and Order of March 30, 2005 in light of the Supreme Court’s recent decision in National Cable and Telecommunications Association v. Brand X Internet Services, 2005 WL 1498860 (U.S. June 27, 2005). By agreement of the parties and the Court, the parties will file memoranda of points and authorities in support of or in opposition to this motion no later than July 14, 2005. Any responses thereto shall be filed by July 22, 2005.

In order to give the Court an opportunity to re-examine its decision, Defendant will file a motion to stay the appeal currently pending before the Third Circuit until such time as the Court denies Defendant’s motion for relief or issues an order signifying its intention to grant it. United States v. Contents of Accounts, 971 F.3d 974, 988 (3d Cir. 1992). If the Court denies Defendant’s motion for relief, the Court of Appeals will issue a new briefing schedule. If the Court’s order indicates that it would grant relief under Rule 60(b) and vacate its judgment should the case be remanded to it, Defendant will move the Court of Appeals to remand the case to this

Court for a final ruling.<sup>1</sup> Id. This procedure follows the “indicative ruling” procedure described by the Third Circuit in Contents of Accounts:

The filing of a notice of appeal does not divest a district court of jurisdiction to entertain a Rule 60(b) motion. See Main Line Fed. Savs. & Loan Assoc. v. Tri-Kell, Inc., 721 F.2d 904, 906 (3d Cir.1983). The district court's failure to rule on the motion before an appeal is filed or thereafter either to deny the motion or signify its intent to grant it leaves nothing for a court of appeals to review with respect to the merits of the motion. Thus, the district court retained the power to deny it, see Venen, 758 F.2d at 123, or to notify Friko that it would, if given the power, grant the motion. In the latter case, Friko could have asked this Court to remand the case to the district court for the purpose of considering the motion, see Main Line, 721 F.2d at 906; see also Hancock Indus., 811 F.2d at 239-40 (discussing Venen and Main Line).

Contents of Accounts, 971 F.3d at 988; see also United States v. Cronin, 466 U.S. 648, 667 n.42 (1984) (acknowledging the District Court’s jurisdiction to hear a motion for a new trial under Fed. R. Crim. P. 33 despite the fact that the case was pending on direct appeal at the time). A proposed “indicative ruling” accompanies this motion.

Although Plaintiffs do not consent to the ultimate relief sought, they have no objection to the procedures outlined herein.

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<sup>1</sup> Until the Third Circuit remands the case to this Court, this Court may deny the Rule 60(b) motion, but it lacks the authority to grant it. Cf. Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982) (the filing of a notice of appeal “divests the district court of its control over those aspects of the case involved in the appeal”). Defendant will not seek a remand unless the Court issues an indicative ruling, in order to preserve its ability to appeal directly from the Court’s March 30, 2005 decision as opposed to the denial of a 60(b) motion, which is reviewed only for abuse of discretion. See Fed. R. App. Pro. 4(a)(4)(A)(vi); Ahmed v. Dragovich, 297 F.3d 201, 209 (3d Cir. 2002) (standard of review for Rule 60(b) motions).

Dated: June 30, 2005

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this document has been filed electronically and is available for viewing and downloading from the ECF system.

/s/ Gillian Flory

GILLIAN FLORY

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

AARP, et al.,

Plaintiffs,

V.

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Defendant.

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## ORDER

Upon consideration of Defendant's Motion for Relief from Judgment and the entire record in this case, the Court hereby indicates that, should this case be remanded from the Court of Appeals, it would enter an order vacating its Amended Memorandum and Order of March 30, 2005.

IT IS SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_ of 2005.

ANITA B. BRODY  
United States District Judge