

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

WESTERN RESERVE LIFE ASSURANCE )  
 CO. OF OHIO, )  
   Plaintiff, )  
   ) )  
   vs. ) )  
   ) ) C.A. No. 09-470-S

JOSEPH CARAMADRE, RAYMOUR )  
 RADHAKRISHNAN, ESTATE PLANNING )  
 RESOURCES, INC., HARRISON CONDIT, )  
 and FORTUNE FINANCIAL SERVICES, )  
 INC., )  
   Defendants; )

TRANSAMERICA LIFE INSURANCE )  
 COMPANY, )  
   Plaintiff, )  
   ) )  
   vs. ) )  
   ) ) C.A. No. 09-471-S

JOSEPH CARAMADRE, RAYMOUR )  
 RADHAKRISHNAN, ESTATE PLANNING )  
 RESOURCES, INC., ESTELLA )  
 RODRIGUES, EDWARD MAGGIACOMO, )  
 JR., LIFEMARK SECURITIES CORP., and )  
 PATRICK GARVEY, )  
   Defendants; )

WESTERN RESERVE LIFE ASSURANCE )  
 CO. OF OHIO, )  
   Plaintiff, )  
   ) )  
   vs. ) )  
   ) ) C.A. No. 09-472-S

JOSEPH CARAMADRE, RAYMOUR )  
 RADHAKRISHNAN, ESTATE PLANNING )  
 RESOURCES, INC., ADM ASSOCIATES, )  
 LLC, EDWARD HANRAHAN, THE )  
 LEADERS GROUP, INC., and CHARLES )  
 BUCKMAN, )

Defendants;	)	
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WESTERN RESERVE LIFE ASSURANCE	)	
CO. OF OHIO,	)	
Plaintiff,	)	
	)	
vs.	)	C.A. No. 09-473-S
	)	
JOSEPH CARAMADRE, RAYMOUR	)	
RADHAKRISHNAN, ESTATE PLANNING	)	
RESOURCES, INC., DK LLC, EDWARD	)	
HANRAHAN, THE LEADERS GROUP,	)	
INC., and JASON VEVEIROS,	)	
Defendants;	)	
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WESTERN RESERVE LIFE ASSURANCE	)	
CO. OF OHIO,	)	
Plaintiff,	)	
	)	
vs.	)	C.A. No. 09-502-S
	)	
JOSEPH CARAMADRE, RAYMOUR	)	
RADHAKRISHNAN, ESTATE PLANNING	)	
RESOURCES, INC., NATCO PRODUCTS	)	
CORP., EDWARD HANRAHAN, and THE	)	
LEADERS GROUP, INC.,	)	
Defendants;	)	
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TRANSAMERICA LIFE INSURANCE	)	
COMPANY,	)	
Plaintiff,	)	
	)	
vs.	)	C.A. No. 09-549-S
	)	
LIFEMARK SECURITIES CORP., JOSEPH	)	
CARAMADRE, RAYMOUR	)	
RADHAKRISHNAN, ESTATE PLANNING	)	
RESOURCES, INC. and EDWARD	)	
MAGGIACOMO, JR.,	)	
Defendants; and	)	
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EPR's refusal to respond to interrogatories is not in accord with its obligations under Fed. R. Civ. P. 33 or the terms of the ICMO. As is discussed more fully below, Rule 33 requires that EPR designate an individual who can respond on behalf of the corporation even if certain individuals can not be compelled to do so. Moreover, the ICMO does not exempt EPR from discovery or excuse it from designating one of its attorneys, or another individual, to respond to the interrogatories on behalf of the corporation.

### **ARGUMENT**

Rule 33 provides that interrogatories propounded to a corporation “must be answered . . . by any officer or agent, who must furnish the information available to the party.” “It is not necessary that the agent be an officer or managing agent of the corporation.” Chatman v. Nat'l R.R. Passenger Corp., 246 F.R.D. 695, 700 (M.D. Fla. 2007) (permitting corporate paralegal to sign interrogatories). Indeed, corporations have wide latitude to exercise their “broad corporate powers” to designate a person to verify and sign corporate interrogatory answers. United States v. 42 Jars, More or Less, Bee Royale Capsules, 162 F.Supp. 944, 946 (D.C.N.J. 1958), aff'd United States v. 42 Jars, More or Less, Bee Royale Capsules, 264 F.2d 666 (3d Cir. 1959).

It is not necessary that the corporation designate an individual who has personal knowledge of the information provided in response to interrogatories. To the contrary; Rule 33 requires that the agent “furnish the information available to the party” – i.e., the corporation. Therefore, Rule 33 “expressly permits a representative of a corporate party to verify the corporation's answers without personal knowledge of every response. . . .” Shepherd v. Am. Broad. Companies, Inc., 62 F.3d 1469, 1482 (D.C. Cir. 1995). See also, General Dynamics Corp. v. Selb Mfg. Co., 481 F.2d 1204, 1210 (8th Cir.1973) (holding that a responding agent's obligation “to furnish all information available to the corporation . . . was not delimited by his

own personal knowledge of the situation”); Bee Royale Capsules, 264 F.2d at 670 (“the agent who answers on behalf of the corporation does not need to have personal knowledge”).

Although an agent need not have personal knowledge of the information provided on behalf of the corporation, the agent “must have a basis for signing the responses and for thereby stating on behalf of the corporation that the responses are accurate.” Shepherd, 62 F.3d at 1482. This requires that the agent obtain all information available to the responding corporation, including, “books, records, other officers or employees, or other sources,” which is necessary for the responding agent to “answer the interrogatories and sign them on behalf of the corporation not himself.” In re Folding Carton Antitrust Litigation, 76 F.R.D. 417, 419 (N.D. Ill. 1977). See also, General Dynamics Corp., 481 F.2d at 1210. In responding for the corporation, it also is necessary for the agent to confer with counsel to ensure that all requested factual information is provided completely and accurately. See Hickman v. Taylor, 329 U.S. 495, 504 (1947) (“A party clearly cannot refuse to answer interrogatories on the ground that the information sought is solely within the knowledge of his attorney.”); General Dynamics Corp., 481 F.2d at 1210 (requiring the responding agent to acquire “information possessed by . . . corporate counsel.”); Shepherd, 62 F.3d at 1482 (“The representative may accomplish this through whatever internal process the corporation has chosen, including discussions with counsel.”).

A corporation may not avoid responding to interrogatories simply because one or more of its agents, employees or officers has invoked his Fifth Amendment privilege or is otherwise shielded from verifying a corporation’s interrogatory answers. See, e.g., U.S. v. Kordel, 397 U.S. 1, 8 (1970); United States v. 3963 Bottles, More or Less, Enerjol Double Strength, 265 F.2d 332, 336 (7th Cir. 1959); In re Folding Carton Antitrust Litigation, 76 F.R.D. at 419-20; Bee Royal Capsules, 264 F.2d at 670. Unlike an individual, a corporation has no Fifth Amendment

right to refuse to participate in discovery. Kordel, 397 U.S. at 8; Braswell v. United States, 487 U.S. 99, 116 (1988). Therefore, a corporation can not

“satisfy its obligation under Rule 33 simply by pointing to an agent about to invoke his constitutional privilege. ‘It would indeed be incongruous to permit a corporation to select an individual to verify the corporation’s answers, who because he fears self-incrimination may thus secure for the corporation the benefits of a privilege it does not have.’ Such a result would effectively permit the corporation to assert on its own behalf the personal privilege of its individual agents.” Id.

Kordel, 397 U.S. at 8 (quoting Enerjol Double Strength, 265 F.2d at 337).

Contrary to EPR’s assertion, the Target defendants are not the “only” individuals “who could possibly answer” the interrogatories. When, as here, a corporation can not force a particular individual to provide interrogatory answers on its behalf, the corporation has an affirmative “duty to appoint an agent who could, without fear of self-incrimination, furnish such requested information as was available to the corporation.” Enerjol Double Strength, 265 F.2d at 336; U.S. v. 48 Jars, More or Less, of an Article of Drug Labeled Tranquilease, 23 F.R.D. 192, 196 (D.D.C. 1958).

Here, the ICMO does not afford any discovery immunity to EPR. Therefore, it must comply with its obligation to designate an agent who can “gather and obtain . . . the information necessary to answer the interrogatories and sign them on behalf of the corporation.” In re Folding Carton Antitrust Litigation, 76 F.R.D. at 419-20. Rule 33 “has been uniformly construed to authorize ‘answers by an attorney’ for the party.” Wilson v. Volkswagen of Am., Inc., 561 F.2d 494, 508 (4th Cir. 1977) (citation omitted). See also, United States v. 42 Jars, More or Less, Bee Royale Capsules, 264 F.2d 666, 670 (3d Cir. 1959) (“The corporation’s attorney will do”); Wright and Miller, 8B Fed. Prac. & Proc. Civ. § 2172 (3d ed.) (“Because the rule authorizes either an officer or an agent to answer, it clearly allows answers by an attorney.”).

EPR has the option to designate one of its attorneys to respond on its behalf without Fifth Amendment concerns. See id. Alternatively, EPR could designate any individual to review materials and confer with appropriate individuals, including EPR's counsel, in order to provide complete and accurate answers on behalf of the company.

Because EPR has an affirmative obligation to designate an agent to respond on its behalf, it can not avoid responding simply because it can not force a particular individual to do so. Like the corporations attempting to avoid responding to discovery in the several cases cited herein, EPR can not use protections extending to certain individuals as an excuse for its refusal to provide discovery to Plaintiffs. EPR's discovery obligations under Rule 33 require that it appoint an agent – such as its attorneys, or any other individual - to acquire all necessary information and provide binding interrogatory answers for the company.

### **CONCLUSION**

For the reasons set forth herein, Plaintiffs respectfully request that EPR be compelled to respond to Plaintiffs' interrogatories within 20 days of hearing on this motion.

Respectfully submitted,

/s/ Brooks R. Magratten

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Dated: September 26, 2011

**CERTIFICATION OF CONFERRAL:**

I certify that, prior to filing this motion, counsel for Plaintiffs conferred with counsel for EPR in an effort to resolve this issue without Court intervention.

/s/ Brooks R. Magratten

**CERTIFICATE OF SERVICE**

I certify that the within document was electronically filed with the clerk of the court on September 26, 2011, and that it is available for viewing and downloading from the Court's ECF system. Service by electronic means has been effectuated on all counsel of record.

/s/ Brooks R. Magratten