

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

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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; )

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TRANSAMERICA LIFE INSURANCE )  
COMPANY, )  
Plaintiff, )

vs. )

C.A. No. 09-471-S

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

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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 )

WESTERN RESERVE LIFE ASSURANCE )	
CO. OF OHIO, )	
Plaintiff, )	
)	
vs. )	
)	C.A. No. 09-564-S
JOSEPH CARAMADRE, RAYMOUR )	
RADHAKRISHNAN, ESTATE PLANNING )	
RESOURCES, INC., HARRISON CONDIT, )	
and FORTUNE FINANCIAL SERVICES, )	
INC., )	
Defendants. )	
)	

**MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANT ESTATE PLANNING RESOURCES, INC.’S (“EPR”) OBJECTION TO  
PLAINTIFFS’ MOTION TO COMPEL EPR TO RESPOND TO INTERROGATORIES**

Defendant Estate Planning Resources, Inc. (“EPR”) submits this memorandum of law in support of its objection to Plaintiffs’ Motion to Compel EPR to Respond to Interrogatories (the “Motion”). For the reasons stated herein, Plaintiffs are not entitled to the discovery responses they seek. Therefore, this Court should deny the motion to compel.

**I. INTRODUCTION**

The motion is a transparent attempt by the plaintiffs to circumvent the discovery protections the parties previously agreed to in the Initial Case Management Order (“ICMO”). The parties previously recognized that these actions running currently with the criminal investigation of certain defendants (the “Target Defendants”)<sup>1</sup> necessitated discovery limitations to protect the rights of the Target Defendants. The interrogatories propounded by Plaintiff are a direct affront to those agreed-upon protections. While the interrogatories are nominally directed to EPR, the substance of the information sought in the interrogatories reveals the true target –

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<sup>1</sup> The term “Target Defendants” refers to the individuals identified by the ICMO, filed September 13, 2011, which named Joseph Caramadre, Raymour Radhakrishnan, Edward Maggiacomo, Harrison Condit, and Edward Hanrahan and “Target Defendants.”

Joseph Caramadre. Mr. Caramadre, however, is one of the targets of the ongoing parallel federal grand jury investigation – one of the “Target Defendants.” If the Court requires EPR – and by extension Mr. Caramadre – to answer these interrogatories, that ruling will prejudice Mr. Caramadre in a way that directly undermines the purpose of the ICMO. Mr. Caramadre would be forced to either jeopardize his defenses to a potential criminal case or allow an adverse inference to be drawn against him and his company by invoking his Fifth Amendment right against self-incrimination. Accordingly, this Court should enforce the spirit of the ICMO, follow the applicable case law, and deny this motion.

## **II. RELEVANT FACTUAL BACKGROUND**

The defendants filed two motions to stay earlier in this litigation. There, they argued that this Court should not require them to defend this civil action while the federal criminal investigation was in progress.<sup>2</sup> The Court did not stay the case in its entirety, but the Court and the parties recognized the potential prejudice to the rights of the Target Defendants if their participation in this civil litigation led to them making statements related to the criminal investigation. To prevent this prejudice, the parties agreed upon the ICMO and the Court entered the order. Paragraph 5 of the ICMO specifically addresses the possibility of Target Defendants having to answer interrogatories – either on their own behalf or on behalf of a corporation:

the parties may forthwith propound interrogatories pursuant to Rule 33, requests for admission pursuant to Rule 36, and notice the deposition of any party, or of any third party witness, whether pursuant to Rule 30 or Rule 31, except that no Target Defendant shall propound interrogatories or requests for admission, or notice any such deposition, nor shall any Target Defendant, whether on his own behalf or on behalf of an organization pursuant to the procedures outlined in Rule 30(b)(6) or Rule 31 (a)(4), be required to respond to any such interrogatories or requests for admission, nor be noticed or subpoenaed for any deposition, orally or

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<sup>2</sup> EPR herein incorporates by reference all of the arguments against requiring the Target Defendants to defend themselves in these civil cases while they are simultaneously fighting off potential indictments in the parallel federal grand jury investigation that they made in their earlier-filed motions to stay.

in writing, until further order of the Court; provided that any Target Defendant may participate by attendance and cross-examination in any deposition of any other party or third party witness noticed by any other party.

ICMO at ¶ 5 (attached as Exhibit A).<sup>3</sup> This provision not only prohibits requiring any of the Target Defendants from answering interrogatories directed to them, but it also prohibits compulsion of Target Defendants to answer interrogatories on behalf of any organization.

Now Plaintiffs propound interrogatories on EPR. Those interrogatories, however, are truly directed to Mr. Caramadre. They seek information that only Mr. Caramadre can provide. For example, the interrogatories seek to learn “every action EPR took in connection with the Annuity and Application” that is the subject of each complaint in this matter.<sup>4</sup> Mr. Caramadre is the sole-owner and officer of EPR. Additionally, the interrogatories seek to have EPR (a) identify and describe the substance of every communication with (1) annuitants, (2) owners, (3) agents, and (4) Plaintiff concerning the annuities (interrogatory nos. 2-4, 10); (b) reveal its knowledge of the health of the annuitants and the process of how EPR selected the annuitants (interrogatory nos. 6-7); and (c) identify all persons who provided the information in the interrogatories (interrogatory no. 8). This information is uniquely in the possession of Mr. Caramadre and no one else. Accordingly, EPR declined to respond to the interrogatories in reliance on the ICMO:

Because the only "officers" or "agents" of EPR who could possibly answer this interrogatory on behalf of EPR are "Target Defendants" as defined by Footnote 2 of the Court's Initial Case Management Order (the "ICMO"), which the Court entered on September 10, 2010 and filed on September 13, 2010 (after it was submitted to the Court jointly by all of the parties on September 8, 2010), EPR hereby declines to respond to this interrogatory subject to Paragraph 5 of the

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<sup>3</sup> Other portions of the ICMO provided other protections to the Target Defendant – including a special procedure for responding to document requests (¶ 4) and a special procedure for providing answers to the complaints (¶ 3). Thus, while the ICMO addresses topics other than the protection of the rights of Target Defendants, it is clear such protection is one of the principal purposes of the ICMO.

<sup>4</sup> EPR attaches Defendant Estate Planning Resources, Inc.'s Answers to Plaintiff's First Set of Interrogatories – which includes the original interrogatories – as Exhibit B.

ICMO, which states that "no Target Defendant shall propound interrogatories ... nor shall any Target Defendant, whether on his own behalf or on behalf of an organization ... be required to respond to any such interrogatories ... until further order of the Court .... " (emphasis added). Accordingly, EPR also reserves any and all objections that it might have as to the form of this Interrogatory until further order of the Court.

See Exhibit B. Now, by the current motion, Plaintiffs move to compel EPR to answer these interrogatories.

### **III. ARGUMENT**

This Court should deny the motion to compel for two reasons. First, the ICMO specifically prohibits the interrogatories propounded by plaintiff. Second, case law teaches that the appropriate tack for a court to take is to delay discovery from organizations when the only individual capable of providing the responses to the discovery requests is the subject of a related criminal investigation.

#### **A. The ICMO prohibits the interrogatories propounded by Plaintiffs.**

The terms of the ICMO specifically protect any of the Target Defendants from answering interrogatories – including providing answers on behalf of an organization. See ICMO at ¶ 5. Plaintiffs ignored this protection by serving the interrogatories. Plaintiff's nominally directed the interrogatories to EPR – admittedly not a Target Defendant. Such action, however, is a transparent attempt to circumvent the discovery restrictions imposed by the ICMO.

The information sought by Plaintiffs in the interrogatories is not generic, accessible corporate information. Rather, it is specific information directly related to the activities and conversations that took place in connection with entering into the annuity contracts that are the subject of both these civil suits and the criminal investigation. Only Mr. Caramadre, the sole-owner and officer of EPR, is capable of providing the information necessary for EPR to respond

to the plaintiffs' questions.<sup>5</sup> If he signs EPR's interrogatory responses on behalf of the company, he risks waiving his right to invoke his Fifth Amendment privilege; either in these cases, or in a later criminal case.

Plaintiffs' contention that EPR could designate another person to answer the interrogatories after obtaining the necessary information from Mr. Caramadre is unpersuasive and unavailing. The Interrogatories cannot be answered simply by reviewing corporate documents. Plaintiffs request that EPR identify (amongst other things) every action that it took in connection with the annuities, the communications that EPR had with annuitants, agents, or owners, and EPR's understanding of the annuitants' health conditions. *See* Exhibit B. For such an individual to provide interrogatory answers, Mr. Caramadre would have to provide the substance of the answers to the designee. If Mr. Caramadre provides the information to someone else who could sign the company's responses under oath, then the plaintiffs or the government could compel that person to testify about what Mr. Caramadre said. Mr. Caramadre, who has not yet been indicted and therefore does not know the basis of the government's potential criminal case against him, could risk making statements that would be used against him in a later criminal trial.

This problem is precisely what the parties and this Court sought to avoid through the entry of the ICMO. The ICMO protects the Target Defendants from the risks that responding to testimonial discovery requests pose to their Fifth Amendment privileges. The ICMO's safeguards would be meaningless if the plaintiffs could turn around and require Mr. Caramadre to answer for EPR the same questions that they are forbidden from asking him directly.

Accordingly, this Court should deny the motion to compel.

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<sup>5</sup> Mr. Radhakrishnan, who was the only other employee from EPR who met with the annuitants of the policies relevant to these lawsuits, no longer works for the company.

**B. Even in the absence of the ICMO, the law protects EPR from answering the interrogatories.**

The protections that the parties bargained for and that this Court blessed through the drafting and entry of the ICMO have their basis in established law. When no one can answer interrogatories addressed to a corporation without subjecting himself to a “real and appreciable” risk of self-incrimination, “the appropriate remedy [is] a protective order . . . postponing civil discovery until termination of the criminal action.” *United States v. Kordel*, 397 U.S. 1, 8-9 (U.S. 1970). “To compel discovery under such circumstances would contravene rights guaranteed by the Fifth Amendment to the individual defendants.” *Paul Harrigan & Sons, Inc. v. Enterprise Animal Oil Co.*, 14 F.R.D. 333, 334-335 (D. Pa. 1953) (allowing a corporate defendant to decline to respond to interrogatories that could only be answered by individual defendants under the threat of criminal prosecution) (“*Harrigan*”). In circumstances where discovery is stayed as to a certain defendant because of potential criminal charges and “discovery is sought from a corporation under that defendant’s sole control[.]” courts have held that “the fairest and most efficient way for a litigation to proceed” is to stay that “corporation’s duty to respond to discovery.” *State Farm Mut. Auto. Ins. Co. v. Grafman*, No. 04-CV-2609 (NG) (SMG), 2007 U.S. Dist. LEXIS 88277, \*16 (E.D.N.Y. Dec. 1, 2007) (collecting cases). A court can employ a “balancing-of-interests” test to determine the appropriate remedy when a party to a civil suit seeks discovery from another party that implicates an ongoing criminal investigation. *Wehling v. Columbia Broadcasting System*, 608 F. 2d 1084, 1088-89 (5th Cir. 1979) (staying discovery to protect constitutional rights of criminal target). In *Harrigan*, the court concluded that the protection of the rights of the targets of the criminal case was “the more important consideration” in contrast to the “inconvenience and delay to the plaintiff[.]” *Id.* at 335.



The Target Defendants aggressively pursued the protection of their constitutional rights by moving for a stay of this civil proceeding in its entirety. In an attempt to cooperate with the plaintiffs, they agreed to the compromises set forth in the ICMO. Now, in exchange for this goodwill, Mr. Caramadre is faced with the same threat that he sought to avoid. EPR is a corporation under Mr. Caramadre's sole control, and the answers to interrogatories sought by Plaintiff subject him to a "real and appreciable" risk of self-incrimination. To preserve Mr. Caramadre's constitutional rights, this Court should deny the motion to compel.

### **Conclusion**

For the reasons set forth herein, this Court should deny the plaintiffs' Motion to Compel and enforce the ICMO's protections for Mr. Caramadre and the other Target Defendants.

ESTATE PLANNING RESOURCES, INC.  
By its Attorneys

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### **CERTIFICATE OF SERVICE**

I hereby certify that on October 13, 2011, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF system.

/s/ Robert G. Flanders, Jr.