

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

WESTERN RESERVE LIFE ASSURANCE	.	CIVIL ACTION NOS. 09-00470-S-DLM
CO. OF OHIO	.	09-00471; 09-00472; 09-00473;
Plaintiff	.	09-00502; 09-00549; 09-00564
	.	
V.	.	PROVIDENCE, RHODE ISLAND
	.	JANUARY 7, 2011
CONREAL LLC, et al	.	
Defendant	.	

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE DAVID L. MARTIN
UNITED STATES MAGISTRATE JUDGE

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P R O C E E D I N G S

CASE CALLED INTO SESSION

THE COURT: Western Reserve Life Assurance Company of Ohio v. Joseph Caramadre, et al, Civil Action 09-470-S. Have these matters been consolidated counsel?

MR. MAGRATTEN: Not formally, Judge.

THE COURT: All right. I'll announce all the case numbers, Case No. Civil Action 09-470-S, 09-471-S, 09-472-S, 09-473-S, 09-502-S, 09-549-S and 09-564-S. There are two motions before the Court, numerically the first is Document No. 70 which is plaintiff's motion for entry of a confidentiality order. And the second is Document No. 72, plaintiff's omnibus motion for a protective order striking defendant Estate Planning Resources Inc.'s interrogatories. The attorneys will identify themselves please.

MR. MAGRATTEN: Brooks Magratten for the plaintiffs.

MR. DALY: Michael Daly for the plaintiffs.

MR. PARKER: Matt Parker for ADM Associates LLC, Estate Planning Resources Incorporated, Joseph Caramadre, Harrison Condit, Raymour Radhakrishnan and Estella Rodrigues.

MR. TRAINI: Anthony Traini for Edward Maggiacomo Jr., Your Honor.

MR. SHERMAN: Deming Sherman for the Leaders Group.

MR. PRENTISS: Dan Prentiss DK LLC.

MR. BRENNER: Jeffrey Brenner representing Fortune

1 MR. MAGRATTEN: It is, Your Honor.

2 THE COURT: Mr. Parker, clear to you?

3 MR. PARKER: It is. Thank you, Your Honor.

4 THE COURT: All counsel clear?

5 COUNSEL: Yes, Your Honor.

6 THE COURT: All right.

7 MR. MAGRATTEN: Your Honor, will you be entering the
8 confidentiality order or should we present that to, file it
9 with the clerk's office?

10 MR. PARKER: Your Honor, just one point on the one I
11 believe that plaintiffs have proposed. There's a recital in
12 the beginning that says all parties having agreed upon the
13 terms of this order which given today's events I think it's
14 clear we aren't in agreement. I would just request that
15 plaintiffs submit a new draft that withdraws that recital.

16 MR. MAGRATTEN: We will, Your Honor.

17 THE COURT: You do that; submit it and I'll enter it.

18 MR. MAGRATTEN: Thank you.

19 THE COURT: All right, we'll now move on to the next
20 motion which is plaintiff's omnibus motion for a protective
21 order striking defendant Estate Planning Resources Inc.'s
22 interrogatories. Mr. Magratten?

23 MR. MAGRATTEN: Thank you, Your Honor. I mentioned
24 in the last motion--

25 THE COURT: Excuse me, Mr. Magratten.

1 MR. MAGRATTEN: Yes.

2 THE COURT: I'll state for the record I'll issue a
3 very short order on the ruling I just made on this first motion
4 and I'll include restatement about if in the future this matter
5 becomes problematic that the defendants can seek a
6 reconsideration of the ruling today.

7 MR. MAGRATTEN: Very well and we will revise the
8 confidentiality order as Mr. Parker has suggested and get that
9 to you as well.

10 THE COURT: Fine.

11 MR. MAGRATTEN: With respect to the motion for a
12 protective order, as we discussed this relates back to a
13 September status conference with Judge Smith. The target
14 defendants had moved for a global stay of all discovery in the
15 civil case. Judge Smith addressed that in the status
16 conference. There was extended discussion about the pros and
17 cons of limitations on discovery. Judge Smith indicated his
18 feelings on the matter which included his belief that there
19 should not be a blanket stay of discovery but that any
20 limitations on discovery should be applied even handily. Their
21 resulting case management order imposed limitations on the
22 target defendants providing any testimonial evidence such as
23 answers to interrogatories, request for admissions, depositions
24 and the like. And I think the reasons for that as articulated
25 by the defendants were, one, burden. They recited the fact

1 that they were quite busy with the various investigations
2 under way. Number two, they didn't want the target defendants
3 to be in a position where they had to plead the Fifth Amendment
4 in responses to civil discovery. I think Judge Smith was
5 sympathetic to that concern and that lead to the limitation
6 that the plaintiffs and other non-target defendants could not
7 require of the target defendants to do anything other than
8 produce documents at this point. And he made that restriction
9 reciprocal in the same sense that the target defendants cannot
10 turn around and propound interrogatories, request for admission
11 or submit the non-target parties to depositions.

12 We received not long ago a set of interrogatories
13 from Estate Planning Resources Inc. Estate Planning Resources
14 Inc. is a Rhode Island Corporation and according to the current
15 Corporate statement on file the president of Estate Planning
16 Resources is Joseph Caramadre, the treasurer is Joseph
17 Caramadre, the secretary is Joseph Caramadre and the director
18 is Joseph Caramadre. I believe there are at least two other
19 individuals involved in that corporation, Mr. Radhakrishnan and
20 Mr. Maggiacomo. We don't yet have the complete picture of what
21 Estate Planning Resources is all about largely because our
22 discovery that we've been permitted to conduct to date has been
23 fairly limited. But our position is that the interrogatories
24 which have undoubtedly been engineered by Mr. Caramadre through
25 this entity that he largely owns and controls is an end run

1 around the restrictions imposed in the initial case management
2 order. I think the fundamental principle of that order was
3 bilateral limitations. In other words we cannot ask the target
4 defendants certain matters and they likewise cannot ask the
5 same of non-target parties. We think the interrogatories
6 propounded by Estate Planning Resources offends the spirit, if
7 not the letter, of the case management order and for that
8 reason we would ask that these interrogatories be stricken at
9 this point. Or if the Court is inclined to allow Estate
10 Planning Resources to propound these interrogatories then we
11 would ask that the order be modified so that the plaintiffs can
12 propound similar interrogatories for Estate Planning Resources.

13 THE COURT: Thank you, Mr. Magratten.

14 MR. MAGRATTEN: Thank you.

15 MR. TRAINI: Your Honor, I don't think I need to go
16 to the podium. I just have to clarify something.

17 Mr. Magratten indicated that Mr. Maggiacomo is somehow
18 connected with or involved with Estate Planning Resources.
19 He's not and he has not been and he has no interest in it.
20 He's not an officer, a director or anything else and he has no
21 interest in what happens with respect to this particular motion
22 or with those interrogatories.

23 THE COURT: Mr. Parker?

24 MR. PARKER: Thank you, Your Honor. The reason that
25 my clients have objected to plaintiff's motion to strike Estate

1 Planning Resources interrogatories is because contrary to what
2 plaintiff's counsel somewhat infers this was not an order that
3 was unilaterally imposed upon the parties by Judge Smith. It
4 was one that was subject to nearly a month of negotiation
5 between parties' counsel and plaintiff's counsel agreed to the
6 terms that the Court entered in this initial case management
7 order. I think it's important to remind the Court that the
8 case's current posture hasn't yet seen the pleadings close
9 despite the fact that this case now has been going on for
10 nearly a year and a half. We haven't yet had to file answers
11 because of a first round of motions to dismiss that Judge Smith
12 decided upon in June and now a second round of amended
13 complaints that the plaintiffs have filed.

14 So in any ordinary circumstances haven't not yet had
15 to file answers plaintiffs wouldn't be able to propound
16 discovery if it weren't for the good faith negotiation and
17 cooperation of all the parties in the cases here. This is no
18 attempt to end run an agreement. It was one that the parties
19 negotiated together in good faith and we relied upon that. And
20 I just wanted to point out that in addition to propounding
21 interrogatories to the plaintiffs Estate Planning Resource
22 propounded interrogatories to the broker dealers in this case.
23 Two of the three broker dealer parties have responded to those
24 interrogatories. We have seen no objection or motion to strike
25 from those parties.

1 Additionally, I would also like to point out that
2 there's nothing in this protective order or in this case
3 management order that prevents the plaintiffs or any of the
4 other parties from propounding interrogatories to Estate
5 Planning Resources. It only states that target defendants
6 cannot be compelled to respond to those interrogatories. We
7 haven't seen what interrogatories the plaintiffs might like to
8 propound upon Estate Planning Resources, but certainly I could
9 imagine circumstances under which Estate Planning Resources
10 could answer those interrogatories through another employee so
11 long as it wouldn't require one of the targets to give that
12 response and risk jeopardizing his Fifth Amendment Rights. So
13 this is why we've objected to the plaintiff's motion to strike.

14 THE COURT: In your memorandum Mr. Parker, you quote
15 paragraph five of the initial case management order. I gather
16 from reading that your position would be that the excerpt you
17 reproduced says notwithstanding the pendency of any motions to
18 dismiss the parties may forthwith propound interrogatories
19 pursuant to Rule 33 except that no target defendant shall
20 propound interrogatories nor should any target defendant
21 whether on his own behalf or on behalf of an organization be
22 required to respond to any such interrogatories. I gather your
23 point is that modifying phrase whether on his own behalf or on
24 behalf of an organization does not follow that first provision
25 except that no target defendant should propound

1 interrogatories, am I correct?

2 MR. PARKER: That's correct, Your Honor. Here the
3 plaintiffs are trying to compose and ex post facto restriction
4 upon this order that they negotiated.

5 THE COURT: Do you know who actually drafted this
6 language or was there, were there so many versions that it's
7 impossible to say who drafted paragraph five?

8 MR. PARKER: Following the parties at the hearing on
9 the parties' motion to stay in August, Your Honor, Judge Smith
10 encouraged us to go back, try to work with the other parties to
11 draft this agreement. We couldn't. We submitted two competing
12 versions to the Judge that the Judge considered at a chambers
13 conference a few weeks later. We discussed the terms of the
14 two conflicting orders at that conference, left, and then
15 shortly thereafter over email the parties worked out terms that
16 were amendable to both sides. So it really was a joint
17 process, Your Honor.

18 THE COURT: And both sides agreed to this language?

19 MR. PARKER: Yes.

20 THE COURT: All right, thank you.

21 MR. PARKER: Thank you.

22 THE COURT: Any other counsel want to be heard?

23 COUNSEL: No response.

24 THE COURT: All right. Before the Court is
25 plaintiff's omnibus motion for a protective order striking

1 defendant Estate Planning Resources Inc.'s interrogatories.
2 Again the Court has read the memorandum and I've listened to
3 the arguments of counsel. The plaintiffs essentially argue
4 that the defendants are attempting to take advantage of a
5 loophole in the initial case management order. I understand
6 the argument being made by plaintiffs and I can also understand
7 why they describe it as a loophole, but it's represented to the
8 Court that plaintiffs agreed to this language. I think the
9 responsibility was on both sides to scrutinize the proposed
10 language to see if there were any loopholes in it and once they
11 gave their agreement the order was entered and the parties have
12 been operating under it. So I'm going to deny the plaintiff's
13 omnibus motion for a protective order. Mr. Parker, you may
14 prepare an order reflecting that motion for a protective order
15 is denied.

16 MR. PARKER: Thank you, Your Honor.

17 THE COURT: On the first motion as I said I'll issue
18 a brief written order.

19 Anything further before I step down? All right,
20 Court will stand in recess.

21 THE CLERK: All rise.

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CERTIFICATION

I, Maryann V. Young, court approved transcriber, certify that the foregoing is a correct transcript from the official digital sound recording of the proceedings in the above-entitled matter.

/s/ Maryann V. Young

March 3, 2011

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