

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

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WESTERN RESERVE LIFE ASSURANCE  
CO. OF OHIO,

Plaintiff,

vs.

CONREAL LLC, HARRISON CONDIT,  
FORTUNE FINANCIAL SERVICES, INC.,  
and ANTHONY PITOCCO,

Defendants;

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C.A. No.: 09-470-WS

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TRANSAMERICA LIFE INSURANCE  
COMPANY,

Plaintiff,

vs.

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

Defendants;

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C.A. No.: 09-471-WS

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WESTERN RESERVE LIFE ASSURANCE  
CO. OF OHIO,

Plaintiff,

vs.

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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C.A. No.: 09-472-WS

WESTERN RESERVE LIFE ASSURANCE  
CO. OF OHIO,

Plaintiff,

vs.

JOSEPH CARAMADRE, RAYMOUR  
RADHAKRISHNAN, ESTATE PLANNING  
RESOURCES, INC., DK LLC, EDWARD  
HANRAHAN, THE LEADERS GROUP,  
INC., and JASON VEVEIROS,

Defendants;

C.A. No.: 09-473-WS

WESTERN RESERVE LIFE ASSURANCE  
CO. OF OHIO,

Plaintiff,

vs.

JOSEPH CARAMADRE, RAYMOUR  
RADHAKRISHNAN, ESTATE PLANNING  
RESOURCES, INC., NATCO PRODUCTS  
CORP., EDWARD HANRAHAN, and THE  
LEADERS GROUP, INC.,

Defendants;

C.A. No.: 09-502-WS

TRANSAMERICA LIFE INSURANCE  
COMPANY,

Plaintiff,

vs.

LIFEMARK SECURITIES CORP., JOSEPH  
CARAMADRE, RAYMOUR  
RADHAKRISHNAN, ESTATE PLANNING  
RESOURCES, INC. and EDWARD  
MAGGIACOMO, JR.,

Defendants; and

C.A. No. 09-549-WS

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

**CONSOLIDATED MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS  
JOSEPH A. CARAMADRE, EDWARD HANRAHAN, RAYMOUR RADHAKRISHNAN,  
EDWARD MAGGIACOMO, AND HARRISON CONDIT’S MOTIONS TO STAY**

Defendants Joseph A. Caramadre (“Mr. Caramadre”), Edward Hanrahan (“Mr. Hanrahan”), Raymour Radhakrishnan (“Mr. Radhakrishnan”), and Edward Maggiacomo (hereinafter referred to jointly as the “Targets”),<sup>1</sup> together with Defendant Harrison Condit (together all of moving parties are referred to as “Movants”), submit this memorandum of law in support of their motion to stay these seven (7) pending civil actions brought by the Plaintiff Western Reserve Life Assurance Company of Ohio (“WRL”) and Transamerica Life Insurance Company (“Transamerica”) (both part of the same Aegon Insurance Group and who are hereinafter collectively referred to as “Plaintiffs” or “Aegon Companies”) (the seven actions are hereinafter referred to as the “Aegon Civil Actions”) until the completion of a parallel federal

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<sup>1</sup> The references to Mr. Caramadre, Mr. Hanrahan, Mr. Radhakrishnan, and Mr. Maggiacomo as “Targets” are for clarity’s sake. We are cognizant of the fact that the term “target” is merely an informal designation by the U.S. Attorney’s Office based on its own internal lexicon that has no legal consequence. See UNITED STATES ATTORNEYS’ MANUAL 9-11.151 (1997); see, e.g., *United States v. Washington*, 431 U.S. 181, 189 (1977) (“target witness status neither enlarges nor diminishes the constitutional protection against compelled self-incrimination . . .”).

grand jury criminal investigation (hereinafter the “Grand Jury Investigation”) and the resolution of any criminal proceedings emerging therefrom.<sup>2</sup>

In the absence of a stay the Aegon Civil Actions will undermine the interests of justice and place onerous burdens on the Defendants that extend well beyond the obvious financial toll and anguish of defending the many proceedings against them. Specifically, the Aegon Civil Proceedings would proceed on a fundamentally unfair footing, forcing the Defendants to make their decisions in defending these actions not on the merits but in light of the potential implications – legal, factual, strategic, tactical – of the Grand Jury Investigation and any resultant criminal prosecutions. Inevitably, the overlap in these proceedings, civil and criminal, means that every decision in defending one will resonate against the defense of the other. Working this advantage, the Aegon Companies will try repeatedly to put Defendants in a place where they will be forced to make potentially momentous decisions on an uncertain basis, with one eye always turned with distraction to the 800-pound gorilla in the room, the Government’s criminal proceedings against them. This is, simply put, not a fair way to render justice in a civil dispute.

The Aegon Civil Actions also threaten the fairness of the Grand Jury Investigation and the potential criminal actions, threatening to compromise the Fifth Amendment rights of the Defendants and witnesses in the Aegon Civil Actions. Just as the Aegon Companies can work the twists and turns of the Grand Jury Investigation and any criminal prosecutions to their

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<sup>2</sup> The Movants file this identical Consolidated Memorandum in all seven lawsuits captioned above. Though the Targets are not, at least as of this date, joined as Defendants in C.A. No. 09-470, the Court should stay that action as well. WRL, the Plaintiff in 09-470, has indicated in its opposition to Defendants’ Motion to Dismiss that it intends to add allegations regarding Mr. Caramadre’s alleged “scheme” to its complaint. *See Consolidated Memo. in Response to Defs.’ Mot’s to Dismiss*, C.A. No. 09-470 at 3, n. 3. Thus, C.A. No. 09-470 is integrally related to the other six civil actions as well as to the grand jury investigation. In addition, the grand jury has already subpoenaed at least two of the Defendants joined in C.A. No. 09-470, Harrison Condit and Conreal LLC. (The Court has dismissed all counts against Conreal, but the counts against Mr. Condit remain.) Thus, the Defendants in C.A. No. 09-470 have themselves already been burdened in defending the WRL civil lawsuit while at the same time responding to the overlapping grand jury inquiry; whether or not Mr. Condit, too, is ultimately selected as a formal “target.” For all of these reasons, and also to protect the various interests of the Targets, the Government, and third parties (as discussed in the remainder of the memorandum), Mr. Condit moves to stay C.A. No. 09-470 together with the other six actions.

advantage, the prosecutor can exploit witness testimony and other evidence in the Aegon Civil Actions to extract Fifth Amendment privileged information by way of inference, effectively using civil discovery as a substitute for criminal discovery, which is not allowed.<sup>3</sup>

The Aegon Civil Actions will also substantially burden several potential witnesses who the Government and the Aegon Companies have alleged to be terminally ill as well as other third parties, such as the witnesses' families. This is unnecessary, particularly because the Court has already allowed the Aegon Companies to intervene in Rule 15 depositions in the Grand Jury Proceedings to obtain the core information they would seek to discover.

Allowing the Aegon Companies' civil lawsuits to proceed will also undermine the public interest in effective prosecution and the protection of the rights of putative criminal defendants generally. The early status of this case, the Defendants' good faith in bringing this motion in a timely fashion, and considerations of judicial convenience and efficiency also warrant the granting of a stay. Finally, even the Aegon Companies' interest in the resolution of these civil cases arguably cuts in favor of granting the stay. Indeed, staying these actions in deference to

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<sup>3</sup> Crucially, this is not the typical pre-indictment situation in which a party seeks to stay a civil proceeding and in which, as this Court has noted, courts can be more reluctant to grant a stay. See *Opinion and Order* (Smith, J.), (June 11, 2010), M.C. No. 10-52S at 7 (citing *Microfinancial, Inc. v. Premier Holidays Int'l, Inc.*, 385 F.3d 72, 70 (1<sup>st</sup> Cir. 2004)). To the contrary, the Court's prior order in MC No. 09-84 allowing the Government to proceed with its Rule 15 depositions means that the criminal case is *in media res*, with the Targets being subjected to defending criminal depositions. Such depositions, furthermore, are a rarity in criminal law. This means the Targets have been even *more* involved in defending the criminal case than even the typical *post*-indictment Defendant awaiting trial.

On a related note, while this Court, in M.C. No. 10-52S, recently denied a request for a protective order against SEC administrative subpoenas, that case dealt with a different situation. As the Court explained, the Respondents there objected to a subpoena issued by a governmental agency in the context of an agency enforcement action; they did not move to stay a civil action brought by a commercial party seeking only to vindicate a private interest. See *id.* at 10, n. 2. Thus, unlike in M.C. No. 10-52S, the Grand Jury Investigation does "hamper [the Defendants'] ability to defend" the Aegon Civil Actions. *Id.* (quoting *Brock v. Tolkow*, 109 F.R.D. 116, 120 (E.D.N.Y. 1985)). Moreover, there is no issue in the Aegon Civil Actions of whether it is "the Court's place to tell" an executive government agency how to proceed. *Id.* at 12. In addition, the Fifth Amendment concerns in the Aegon Civil Actions are heightened because involved here are seven parallel civil proceedings deploying all the instrumentalities of discovery; these cases, if allowed to proceed, will probe far deeper than the SEC subpoenas to which the Respondents objected in M.C. No. 10-52S, with adverse implications for defending both the Aegon Civil Actions and the criminal investigation.

the ongoing criminal grand jury investigation and any resultant criminal prosecutions may facilitate later discovery of key defense witnesses and open a swifter path to a resolution.

## **BACKGROUND**

### **A. THE AEGON CIVIL ACTIONS.**

Through the complaints in the Aegon Civil Actions, the Aegon Companies assert multiple civil claims related to variable annuity contracts that they issued to investors. The Plaintiffs allege that Mr. Caramadre and his colleagues identified certain individuals with terminal illnesses and, in some cases, offered these individuals cash to sign applications for variable annuities, naming themselves or other investors as beneficiaries, and designating the terminally ill individuals as the annuitants. The Plaintiffs' complaints accuse Mr. Caramadre, Mr. Hanrahan, Mr. Radhakrishnan, Mr. Maggiacomo, Mr. Condit and other parties of fraud for, *inter alia*, allegedly failing to make material disclosures to the Plaintiffs on the annuity applications. See, generally, Am. Compl., C.A. No. 09-417; Am. Compl., C.A. No. 09-472; Am. Compl., C.A. No. 09-473; Am. Compl., C.A. No. 09-502, Compl., C.A. No. 09-549, Compl. C.A. No. 09-564; see also *Consolidated Memo. in Response to Defs.' Mot's to Dismiss*, C.A. No. 09-470 at 3, n. 3.

### **B. THE PARALLEL GRAND JURY INVESTIGATION.**

Mr. Caramadre, Mr. Hanrahan, Mr. Radhakrishnan, and Mr. Maggiacomo are also known "targets" of a grand jury investigation being conducted in the United States District Court for the District of Rhode Island. As in the Aegon Civil Actions, the Government has alleged that these individuals and/or one or more combinations of them "approached terminally ill individuals and, in exchange for a few thousand dollars, asked them to sign documents permitting the use of their names as 'measuring lives' for certain bonds and annuities." *Opinion and Order Redacted for*

*Publication, In re Grand Jury Proceedings*, MC No. 09-84 (D.R.I. Sept. 22, 2009) (“Opinion and Order”) (attached hereto as Exhibit A), at 1. The Government’s theory in the Grand Jury Investigation appears to be that these individuals “made false material representations to these individuals in order to induce them to sign . . . documents and to perpetuate a fraudulent scheme against insurers of the financial instruments,” *id.* at 2. Thus, it overlaps with the Aegon Companies’ legal theories in the Aegon Civil Actions.

Though the Government has not indicted any of the Targets, it has conducted Rule 15 depositions of various annuitants pursuant to the Court’s Opinion and Order of September 22, 2009. This has put the Targets under the extraordinary burden of attempting to defend against criminal depositions without knowledge of the charges that are, or may be, brought against them. In addition, the Grand Jury has busily subpoenaed companies and parties with whom the Targets were, in one manner or another, involved, adding to the Targets’ burden of responding to the Aegon Civil Actions and the Grand Jury Investigation in tandem.<sup>4</sup>

### **C. THE MULTIPLE ADMINISTRATIVE INVESTIGATIONS.**

Several independent and overlapping administrative investigations now lay atop the Aegon Civil Actions and the Grand Jury Investigation. These include investigations by the United States Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA), and the Massachusetts Secretary of State’s Securities Division (MASD). According to the SEC, for example, its investigation is focused on whether Mr. Caramadre, Mr. Radhakrishnan, Mr. Maggiacomo, and Estate Planning Resources, Inc. (EPR, a defendant in six of the Aegon Civil Actions) violated various provisions of the federal securities laws in connection with the solicitation of people to serve as annuitants for variable annuities and the

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<sup>4</sup> The Government requested on the face of the relevant subpoenas that their contents be kept in confidence. In accordance with that request, the Movants do not attach the subpoenas to this memorandum. Movants will make them available, however, upon the Court’s request.

purchase of those annuities. *See [SEC's] Memorandum in Support of Application for Order to Show Cause and for Order to Comply with Administrative Subpoenas* at 2, C.A. No. 10-52/S; *see also Opinion and Order*, M.C. No. 10-52S (D.R.I. June 11, 2010). The FINRA and MASD investigations also overlap, focusing on the same course of conduct.

## **ARGUMENT**

For the reasons discussed below, the Court should stay the Aegon Civil Actions in deference to the ongoing Grand Jury Investigation, and any resultant criminal prosecutions, regarding substantially identical subject matter.

### **I. STANDARD OF REVIEW**

It is well settled that federal courts have the authority to stay civil actions pending the outcome of a grand jury investigation or criminal prosecution. *See Eastwood v. United States*, No. 2:06-cv-164, 2008 U.S. Dist. LEXIS 106777, at \*2 (E.D. Tenn. Nov. 14, 2008) (“Under certain circumstances, a court may grant or extend a stay of a pending civil action in order to avoid interfering in a pending criminal prosecution or grand jury investigation.”); *see also Wallace v. Kato*; 549 U.S. 384, 393-94 (2007) (“it is within the power of the district court, and in accord with common practice, to stay the civil action until the . . . likelihood of a criminal case is ended.”); *Kashi v. Grastsos*, 790 F.2d 1050, 1057 (2d Cir. 1986) (noting that district court exercised sound discretion in staying civil trial until the U.S. Attorney declined to prosecute); *United States v. Hugo Key & Son, Inc.*, 672 F. Supp. 656, 657 (D.R.I. 1987) (“There can be no doubt that this court has the power to stay proceedings.”). “The decision of whether to issue a stay depends on the particular circumstances of the case.” *United States v. A Certain Parcel of Land*, 781 F. Supp. 830, 834 (D.N.H. 1992). When deciding whether to stay a civil case that is parallel to an ongoing criminal case, courts consider seven factors: (1) the hardship on the



defendant from defending the civil and criminal proceedings simultaneously, (2) the public interest, (3) the interest of third parties, (4) the convenience of the civil and criminal courts, (5) the good faith of the litigant in seeking the stay, (6) the status of the cases, and (7) the interest of the plaintiff in a expeditious resolution of the civil case. *Microfinacial, Inc. v. Premier Holidays Int'l, Inc.*, 385 F.3d 72, 78 (1st Cir. 2004).

More generally, the key to the Court's consideration is a balancing of "the interests of justice . . . ." *United States v. Kordel*, 397 U.S. 1, 12 n.27 (1970). Notably, "[t]he similarity of the issues underlying the civil and criminal actions is considered the most important threshold issue . . . ." *Eastwood*, 2008 U.S. Dist. LEXIS 106777, at \*4-\*5. When it is likely that "the 'resolution of the related criminal matter may eliminate much of the Court's work in the civil action' by simplifying the issues" it makes sense to grant a stay to conserve judicial resources. *Turley v. United States*, No. 02-4066-CV-C-NKL, 2002 U.S. Dist. LEXIS 16964, at \*10 (W.D. Mo. Aug. 22, 2002) (quoting *White v. Mapco Gas Products, Inc.*, 116 F.R.D. 498, 502 (E.D. Ark. 1987)). Furthermore, while a stay "may cause some inconvenience and delay to the [Civil Plaintiff], protection of the Defendants' rights against self-incrimination is the more important consideration." *A Certain Parcel of Land*, 781 F. Supp. at 834 (staying Government's civil forfeiture case while couple was also under criminal investigation by the I.R.S.).

Although the stay issue more commonly arises at the post-indictment phase, courts also grant stays, as appropriate, in deference to grand jury investigations or other criminal inquiries still in the pre-indictment stage. Compare *S.E.C. v. Dresser Indus.*, 628 F.2d 1368, 1376 (D.C. Cir. 1980) (denying stay where defendant had not yet been indicted); with *SCHS Assocs. v. Cuomo*, 139 F. Supp. 2d 238, 245 (D.R.I. 2001) ("[T]his court entered a stay of these civil proceedings because of a pending related criminal investigation of plaintiff and its chief

executive officer . . . .”); *A Certain Parcel of Land*, 781 F. Supp. at 834 (finding that stay was warranted, even though movants were not yet indicted, and Government had claimed no criminal investigation was currently underway).

**II. THE FACTORS WEIGH HEAVILY IN FAVOR OF GRANTING A STAY.**

**A. The Targets will suffer hardship if forced to defend both actions simultaneously.**

If the Court does not grant a stay, the progress of the Aegon Civil Actions will force substantial hardship on the Targets.

First, as discussed in the introductory section of this memorandum, the Aegon Civil Actions will proceed on a fundamentally unfair footing, forcing the Targets to litigate on the shifting sands of civil and criminal proceedings, each generating uncertain and unpredictable ramifications for the defense of the other.

Second, the civil actions will cause the Targets hardship as a practical matter by forcing them to bear the expense and effort of attempting to prepare for and respond adequately to the multi-barreled assault of discovery in all seven civil proceedings as well as in the Grand Jury Investigation. The active administrative investigations, state and federal, further compound the burdens on the Targets.

These practical burdens take many forms. To take merely one example, the Aegon Companies will force the Targets to defend depositions of numerous civil action witnesses at a time when the Targets need to be preparing, instead, to defend their own potential criminal trials. In addition, if discovery proceeds in the civil actions, the Aegon Companies will inevitably issue a series of document requests, interrogatories, requests for admission and other discovery that overlaps largely, but not entirely, with the Grand Jury, the SEC, FINRA and MASD’s inquiries, subpoenas, and other demands. This will embroil the Targets in an endless and burdensome

assortment of documents, testimony, facts, and other evidence for issues of responsiveness, relevance, and privilege, while at the same time they grapple with the related but distinct requirements of federal and state securities statutes, administrative regulations, contract law, and common law principles of fraud. The financial burden of defending the Aegon Civil Actions is enormous, particularly in the comparative sense; the Aegon Companies are multi-billion dollar corporations, and the U.S. Attorney's Office, the SEC, FINRA, and MASD each have the supporting apparatus of the state behind them. Staying the civil actions temporarily will afford a necessary release valve to enable the Targets to pursue their already burdensome criminal defense as best they can with limited resources.

Third, simultaneously defending against the civil actions will impair the Targets' criminal defense, as well as their Fifth Amendment due process rights, by allowing the Government to exploit the "broad scope of civil discovery" to obtain evidence it would not otherwise have access to through the more narrow discovery available in criminal actions. *A Certain Parcel of Land*, 781 F. Supp. at 834. Specifically, if and when the Targets' Fifth Amendment rights "compel[]" them either to answer or to "refuse to answer questions" that the Civil Plaintiffs pose, the Defendants may "reveal[] [their] weak points to the criminal prosecutor" tracking the progress of this action. *Id.* "This point-by-point review of the civil case may lead to a 'link in the chain of evidence that unconstitutionally contributes to the defendant's conviction.'" *Id.* (quoting *Afro-Lecon, Inc. v. United States*, 820 F. 2d 1198, 1203 (Fed. Cir. 1987)); *see also Eastwood*, 2008 U.S. Dist. LEXIS 106777, at \*11-\*12 ("civil parties 'subject to a criminal indictment [or investigation] must often choose between waiving their *Fifth Amendment* rights . . . or asserting the privilege and risk losing the civil case.'") (quoting *In re Adelpia Commc'ns Secs. Litig.*, No. 02-1781, 2003 U.S. Dist. LEXIS 9736, at \* 13 (E.D. Pa. May 14, 2003)); *United*

*States v. \$557,933.89*, No. 95-CV-3978 (JG), 1998 U.S. Dist. LEXIS 22252, at \*12 (E.D.N.Y. March 9, 1998) (“Requiring Mercado either to answer the questions posed to him by the government or to decline to do so and lose the seized property would ‘undermine [his] Fifth Amendment privilege against self-incrimination . . . .’”); *Hugo Key & Son*, 672 F. Supp. at 658 (noting movant’s concerns that “such liberal discovery rules would expose the [movant’s] strategy . . . .”).

Fourth, allowing the civil actions to proceed will undermine the Targets’ ability to defend themselves in the criminal proceedings because it will force them to reveal the bases for whatever defenses the Targets may wish to assert in the criminal matters. *See United Technologies Corp. v. Dean*, 906 F. Supp. 27, 28 (D. Mass. 1995) (noting defendant’s concerns that going forward with parallel civil action “would expose a defendant to a real and appreciable risk of self-incrimination, expand criminal discovery beyond what is otherwise available, reveal the basis of the criminal defense in advance of the criminal trial, or otherwise undercut due process protections.”).

Finally, given the Government’s inability to articulate precisely its legal theory for prosecuting the Targets, the burdens of carrying on both defenses simultaneously are more onerous than in most instances, because it is always more burdensome to defend against unknown charges. Grand jury secrecy rules further complicate the situation by preventing the Defendants from knowing various specifics of the pending criminal investigation. *See Eastwood*, 2008 U.S. Dist. LEXIS 106777, at \*12 (noting that this complication hinders both civil parties).

Accordingly, this factor weighs heavily in favor of a stay.

**B. The public interest also warrants a stay because the civil actions will undermine the Government's prosecution and the Targets' constitutional rights, and disrupt the lives of witnesses with terminal illnesses.**

The public's interest also militates in favor of granting a stay.

First, allowing the civil actions to proceed will undermine the public's interest in effective law enforcement. *Hugo Key and Son*, 672 F. Supp. at 658 (“administrative policy gives priority to the public interest in law enforcement”) (quoting *Driver v. Helms*, 402 F. Supp. 683, 685 (D.R.I. 1975)). Indeed, the public interest in law enforcement “seems so necessary and wise that a trial judge should give substantial weight to it in balancing the policy against the right of a civil litigant to a reasonably prompt determination of his civil claims.” *Turley*, 2002 U.S. Dist. LEXIS 16964, at \*11, (quoting *Campbell v. Eastland*, 307 F.2d 478, 487 (5<sup>th</sup> Cir. 1962)).

In this case, granting a stay will promote effective law enforcement by helping to preserve the confidentiality and viability of the pending criminal investigation. In contrast, allowing the Aegon Civil Actions to proceed will risk undermining the Government's efforts at prosecution. Piling burden upon burden, discovery in the civil actions will inevitably exacerbate the challenges to the Targets of responding comprehensively, promptly, and accurately to the Government's ongoing criminal investigation. This risks inadequate disclosures to the Government, as well as inadvertent disclosures to civil plaintiffs of Rule 6A material. Simply put, the burdens on the Targets may hurt the Government as well.

Second, the public has a compelling interest in protecting the Targets' Fifth Amendment rights which, as indicated above, the Aegon Civil Actions will severely compromise in this case. *See, e.g., Eastwood*, 2008 U.S. Dist. LEXIS 106777, at \*17 (analyzing Fifth Amendment rights

under “public interest” prong; noting that “[p]ublic policy supports the grant of a stay of civil proceedings where a criminal investigation is pending . . .”).

Third, the public interest favors excusing the mostly elderly, and, as the Government claims, terminally ill annuitants<sup>5</sup> from the Aegon Companies’ further discovery efforts to allow them and their families to spend what are potentially the last days and months of the witnesses’ lives together without this intrusion. According to the Government, the annuitants involved are terminally ill, house bound, and in some cases literally on their death beds. In the Grand Jury Investigation, the Government has already imposed on these individuals through taking their videotaped depositions, sometimes in their homes, once in the deponent’s apartment, and once in a nursing home. To deny a stay would potentially liberate the insurance companies to propound subpoenas and subpoenas duces tecum to these same individuals and call them to trial as witnesses, subjecting the annuitants and their families to intense and additional burdens and pressures.<sup>6</sup> They would have to deal with new lawyers, new questions, and repeated demands for compliance from the insurance companies’ lawyers. The Aegon Companies’ pursuit of their civil claims may, unfortunately, force the Targets and the other defendants in the Aegon Civil Actions to launch their own discovery efforts directed at the same individuals, if only to build an adequate defense. All of this is contrary to the public interest.

Finally, it is significant that these are purely private actions brought by commercial plaintiffs. Unlike other cases in which courts have sometimes denied motions to stay, there is no

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<sup>5</sup> Although it is not clear which witnesses the Plaintiffs intend to depose in these actions, the Plaintiffs may seek to depose terminally ill individuals not named as defendants in these actions on the grounds that their testimony would be reasonably calculated to lead to the discovery of admissible evidence. *See* Fed. R. Civ. P. 26(b)(1). Without waiving potential objections to such discovery efforts, the Movants note herein the possibility of such depositions and their impact on the public interest.

<sup>6</sup> Though the Aegon Companies have already obtained information from the annuitants by attending the Government’s Rule 15 depositions of several annuitants (Patrick Garvey, on November 20, 2009; Charles Buckman, on December 17, 2009; and Anthony Pitocco, on April 21, 2010), they may very well seek to direct such additional discovery efforts at the annuitants and/or their families.

federal agency interest arguably reflective of a broader public interest that extends beyond the Plaintiffs' mere monetary goals. *Compare Kordel*, 397 U.S. at 11 (denying stay of civil case brought by FDA to protect consumers from misbranded drugs).

**C. The interests of third-party parties favor the granting of a stay.**

As discussed above, the interests of potential terminally ill witnesses and their families favor a stay because the civil actions would pose a supplementary intrusion into their lives of no benefit to them or their loved ones, let alone the public interest.

**D. A stay will lead to more effective case management and the conservation of judicial resources.**

The Court's convenience is "deserving of substantial weight" in considering a motion to stay. *Microfinancial*, 385 F.3d at 79. Here, granting the requested stay will aid in the "conservation of judicial resources and comprehensive disposition of litigation." *Aetna Cas. & Surety Co. v. Kelly*, 889 F. Supp. 535, 538 (D.R.I. 1995) (quoting *River Water Conservation District v. United States*, 424 U.S. 800, 817 (1976) (recognizing risks of duplication of effort and inconsistent results in parallel piecemeal litigation)).

Allowing the parallel criminal proceedings to continue unimpeded will likely develop key issues to these cases, and it will efficiently avoid duplicative discovery. *See Crooker v. Burns*, 544 F. Supp. 2d 59, 65 (D. Mass. 2008) ("This [stay of the Plaintiffs' civil cases] will permit the full development of a record regarding the criminal proceedings so the court may better judge the relevance of the [Plaintiff's allegations] and rule consistently on any constitutional issues."); *Turley*, 2002 U.S. Dist. LEXIS 16964, at \*10 (staying plaintiff's lawsuit against the I.R.S. while she was under investigation by the I.R.S. for issues related to her lawsuit.); *see also Dean*, 906 F. Supp. at 28 (noting that resolution of criminal matter may simplify discovery or otherwise narrow the issues). Moreover, a stay pending "resolution of the

related criminal matter may eliminate much of the Court's work in the civil action' by simplifying the issues or eliminating the conflict concerning the [Defendants'] potential assertion of their *Fifth Amendment* privilege." *Turley*, 2002 U.S. Dist. LEXIS 16964, at \*10 (quoting *White v. Mapco Gas Products, Inc.*, 116 F.R.D. 498, 502 (E.D. Ark. 1987)). This will, in turn, reduce the potential for multiple discovery-related disputes and motions.

Similarly, allowing "the underlying [criminal action to run] its course may promote wise judicial administration by assisting the parties in evaluating their respective positions for settlement purposes." *Kelly*, 889 F. Supp. at 543. Here, those issues – namely, the facts surrounding the Targets' and other Defendants' participation in the Aegon Companies' variable annuities – will be addressed in the criminal proceedings. Thus, first resolving those underlying issues of potential criminal conduct would likely assist the parties and this Court in an efficient resolution of this and the other related civil actions. Indeed, the resolution of the criminal proceedings could well lead to a settlement of these cases.

**E. The Defendants have moved for a stay in good faith.**

The circumstances demonstrate the Defendants' good faith in moving for the stay because they have raised the issue promptly and they have a firm legal basis for their motion. The Movants have neither delayed bringing this motion nor dragged their heels in the civil matters. *Compare Microfinacial*, 385 F.3d at 79 (defendants moved to stay civil action when it was on the brink of trial, over three years after it had been commenced); *McCullaugh v. Krendick*, CA. No.: 5:07CV2341, 2009 U.S. Dist. LEXIS 87849, at \*9 (N.D. Ohio Sept. 9, 2009) (defendants waited four months to move to stay, after the close of discovery, and after they were forced to invoke their Fifth Amendment rights). Instead, the Defendants have moved for a stay at a very early stage, immediately following the denial of their motions to dismiss these actions



in their entirety. In addition, Defendants have a good faith basis for their motion in that they seek to protect core constitutional rights in the face of a civil action overlapping with a uniquely onerous and simultaneously *active* grand jury investigation.

**F. The status of the cases favors granting a stay.**

The early status of the civil cases also strongly favors granting this motion given that discovery has not yet even begun in the Aegon Civil Actions, *see Microfinancial*, 385 F.3d at 79, and the criminal proceedings, though pre-indictment, are highly active. Indeed, as explained above, *see supra*, n. 3, the Grand Jury Investigation has involved the extraordinary step of extensive Rule 15 criminal deposition testimony. *Cf. Life Insurance Co. v. Phillips*, 2007 U.S. Dist. LEXIS 52692, \*6 (D. Co. July 27, 2007) (holding that pre-indictment criminal investigation weighed in favor of granting stay of discovery in civil action).

**G. The overlap between the civil actions and the criminal proceedings favors granting a stay.**

The heavy overlap between the criminal and civil proceedings also favors granting a stay. *See, e.g., Eastwood*, 2008 U.S. Dist. LEXIS 106777, at \*4-\*5; *AIG*, 2008 U.S. Dist. LEXIS 526902 at \*6.

**H. The Plaintiffs may benefit from a stay.**

Finally, weighed against all of these factors, the Aegon Companies may allege that they will suffer a potential for prejudice in that potential annuitant witnesses may predecease discovery in this action. Such a concern does not even relate to the vast majority of the discovery that would proceed if the Court does not stay the Aegon Civil Actions. Moreover, even if this is a valid concern, it should not override all of the considerations addressed above, such as the Targets' substantial interests in fair trials (both civil and criminal) and the public's interest in effective prosecution. *See Dean*, 906 F. Supp. at 29 ("while a stay may cause some

inconvenience and delay to [the plaintiff], ‘protection of defendants’ constitutional rights against self-incrimination is the more important consideration’.”) (quoting *Corbin v. Federal Deposit Ins. Corp.*, 74 F.R.D. 147, 149-50 (E.D.N.Y. 1977)). In fact, the Court has already largely obviated this concern by allowing the Plaintiffs to participate in the Government’s Rule 15(a) depositions of allegedly terminally ill annuitants. Furthermore, staying these actions will not prejudice the Aegon Companies’ rights under the relevant annuity contracts since, as this Court ruled in partially granting Defendants’ motions to dismiss, the Aegon Companies are not entitled to rescind the contracts based on the allegations in their complaints. The Aegon Companies will not be prejudiced on their remaining claims, which seek solely money judgments, because they will be entitled to collect on such claims if and when they prevail on such claims.<sup>7</sup>

There is, in fact, a reasonable possibility that the Aegon Companies will *benefit* in some respects from a stay. Whatever remedy they seek will survive any criminal proceedings that might result from the current investigation, and, as discussed above, a stay may simplify the issues and facilitate a reasonable settlement for all parties involved. Also, while annuitant witnesses may not be further available in a later civil proceeding, the Plaintiffs will likely enjoy a countervailing benefit in the greater availability of *other* key witnesses, specifically the Targets themselves, who, no longer under the threat of impending criminal prosecution, will be far more likely to testify without need for recourse to their Fifth Amendment rights.

Finally, since the Court always retains the ability to modify its own order, granting a stay at this juncture does not prevent this Court from lifting the stay due to changed circumstances. *See, e.g., SCHS Assocs.*, 139 F. Supp. 2d at 244 (“The stay was lifted . . . because the U.S. Attorney’s office in Rhode Island indicated that it was not pursuing the criminal inquiry any

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<sup>7</sup> Thus, this is not a situation where a party seeking equitable relief may claim to be threatened by irreparable harm in the event the court denies the defendant’s motion for a stay.

further.”); *Certain Real Property*, 751 F. Supp. 1060, 1063 (E.D.N.Y. 1989) (“[T]he Government can always move to vacate the stay if a change in circumstances makes this appropriate.”).

### CONCLUSION

For the foregoing reasons, the Movants respectfully seek a stay of these proceedings until the completion of the ongoing parallel Grand Jury Investigation and the resolution of any criminal proceedings emerging therefrom.

Respectfully submitted,

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Dated: June 16, 2010

**CERTIFICATION**

I hereby certify that on June 16, 2010, 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.