

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

WESTERN RESERVE LIFE :
ASSURANCE CO. OF OHIO, :
Plaintiff, :

v. :

CA 09-470 S

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

TRANSAMERICA LIFE INSURANCE :
COMPANY, :
Plaintiff, :

v. :

CA 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, :

v. :

CA 09-472 S

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

WESTERN RESERVE LIFE ASSURANCE :
COMPANY OF OHIO, :
Plaintiff, :

v. :

CA 09-473 S

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

WESTERN RESERVE LIFE ASSURANCE :
COMPANY OF OHIO, :
Plaintiff, :

v. :

CA 09-502 S

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

TRANSAMERICA LIFE INSURANCE :
COMPANY, :
Plaintiff, :

v. :

CA 09-549 S

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

(Dkt. #58) ("ICMO"). Paragraph 5 of the ICMO provides, in relevant part, that:

no Target Defendant^[1] 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 in writing, until further order of the Court

ICMO ¶ 5. Plaintiffs note that 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. See Motion at 6.

EPR asserts that the interrogatories, while nominally directed at EPR, "are truly directed to Mr. Caramadre. They seek information that only Mr. Caramadre can provide." Memorandum of Law in Support of Defendant Estate Planning Resources, Inc. ("EPR") Objection to Plaintiffs' Motion to Compel EPR to Respond to Interrogatories ("EPR's Mem.") at 5. EPR argues that the Motion should be denied for two reasons. See id. at 6. First, EPR contends that "the ICMO specifically prohibits the interrogatories propounded by plaintiff." Id. Second, EPR argues that the appropriate tack for a court to take is to delay discovery from organizations when the only individual capable of providing the

¹ The Target Defendants are "Joseph Caramadre, Raymour Radhakrishnan, Edward Maggiacomo, Harrison Condit, and Edward Hanrahan." Initial Case Management Order (Dkt. #58) ("ICMO") at 4 n.2.

responses to the discovery requests is the subject of a related criminal investigation. Id. The Court addresses these arguments in turn.

Does the ICMO Prohibit the Interrogatories?

The Court does not agree that the ICMO prohibits Plaintiffs from propounding interrogatories to EPR. The ICMO provides protection only to the Target Defendants, and EPR is not a Target Defendant. See ICMO at 4 n.2. EPR's entreaty that "the Court should enforce the spirit of the ICMO . . .," EPR's Mem. at 4, is unpersuasive for two reasons.

First, at the January 7, 2011, hearing before this Magistrate Judge on Plaintiffs' omnibus motion for a protective order,² counsel for EPR took the opposite position with respect to giving effect to the "spirit" of the ICMO. See Plaintiffs' Reply to Objection to Motion to Compel Defendant Estate Planning Resources to Respond to Interrogatories (Dkt. #120), Ex. A (Transcript of 1/7/11 Hearing ("Tr.)) at 22. Plaintiffs' counsel had argued that the interrogatories propounded by Target Defendant Joseph Caramadre's company, EPR, "offends the spirit, if not the letter, of the case management order and for that reason we would ask that these interrogatories be stricken at this point." Id. Responding to this argument, counsel for EPR urged the literal application of

² See Plaintiffs' Omnibus Motion for Protective Order Striking Defendant Estate Planning Resources, Inc.'s Interrogatories (Dkt. #72).

the terms of the ICMO and emphasized that the order had been the subject of "nearly a month of negotiation between parties' counsel and [that] plaintiff's counsel agreed to the terms that the Court entered" Tr. at 23; see also id. ("This is no attempt to end run an agreement. It was one that the parties negotiated together in good faith and we relied upon that.").

The Court found EPR's argument persuasive and denied the motion for protective order. See Tr. at 25-26. In doing so, the Court stated:

The plaintiffs essentially argue that the defendants are attempting to take advantage of a loophole in the initial case management order. I understand the argument made by plaintiffs and I can also understand why they describe it as a loophole, but it's represented to the Court that plaintiffs agreed to this language. I think the responsibility was on both sides to scrutinize the proposed language to see if there were any loopholes in it[,] and once they gave their agreement the order was entered and the parties have been operating under it.

Tr. at 26. Although the shoe is now on the other foot, the above reasoning continues to be valid.

Second, EPR previously acknowledged that the ICMO allowed interrogatories to be propounded to it. At the January 7, 2011, hearing, counsel for Plaintiffs concluded his argument by stating:

Or if the Court is inclined to allow Estate Planning Resources to propound these interrogatories[,] then we would ask that the order be modified so that the plaintiffs can propound similar interrogatories for Estate Planning Resources.

Tr. at 22. In responding to Plaintiffs' argument, EPR's counsel stated:

Additionally, I would also like to point out that **there's nothing in this protective order or in this case management order that prevents the plaintiffs or any of the other parties from propounding interrogatories to Estate Planning Resources.** It only states that target defendants cannot be compelled to respond to those interrogatories. We haven't seen what interrogatories the plaintiffs might like to propound upon Estate Planning Resources, but certainly I could imagine circumstances under which Estate Planning Resources could answer those interrogatories through another employee so long as it wouldn't require one of the targets to give that response and risk jeopardizing his Fifth Amendment Rights.

Tr. at 24 (bold added). As EPR's counsel recognized,³ the ICMO does not prohibit Plaintiffs from propounding interrogatories to EPR. EPR's reversal of position on this issue diminishes its credibility.

Should the Court Delay Discovery?

As an initial matter, the Court rejects EPR's blanket assertion that "[o]nly Mr. Caramadre, the sole-owner and officer of EPR, is capable of providing the information necessary for EPR to respond to the plaintiff's questions." EPR's Mem. at 6-7. For example, Interrogatory 5 asks EPR to "identify all payments made to, or by, EPR in connection with the Annuity or Application." Interrogatories at 5. Interrogatory 10 requires EPR to "identify all owners, officers, directors, investors, and employers of EPR since January 1, 2000." Id. at 9. Interrogatory 13 asks EPR to

³ The attorney for EPR who appeared at the hearing on the instant Motion is not the same attorney who argued for EPR at the January 7, 2011, hearing.

"identify all communications EPR had with Plaintiff since January 1, 2011"⁴ Id. at 10. The Court is unpersuaded that the information sought by these interrogatories cannot be obtained from company records or sources other than Target Defendants. See City of Chicago v. Reliable Truck Parts Co., No. 88 C 1458, 1989 WL 32923, at *3 (N.D. Ill. Mar. 31, 1989) (noting that agent appointed by corporation to answer interrogatories "need not have 'first-hand personal knowledge' of the facts reflected in the answers" and that the agent can "gather and obtain from books, records, other officers or employees, or other sources, the information necessary to answer the interrogatories and sign them on behalf of the corporation").

Next, EPR argues that "[w]hen 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.'" EPR's Mem. at 8 (quoting United States v. Kordel, 397 U.S. 1, 8-9, 90 S.Ct. 763 (1970)) (second and third alterations in original). While the quotation from Kordel is accurate, EPR's argument assumes that the conditions justifying this relief, namely that "no one can answer the interrogatories addressed to the corporation without subjecting himself to a 'real and appreciable' risk of self-

⁴ This lawsuit was filed on October 2, 2009.

incrimination," Kordel, 397 U.S. at 8-9, exist with respect to all of the Interrogatories that have been propounded. The Court does not accept this assumption. See Reliable Truck Parts Co., 1989 WL 32923, at *2 ("Courts should be careful not to merely accept the 'say-so' of a claimant as sufficient demonstration of the risk of incrimination.") (citing Hoffman v. United States, 341 U.S. 479, 486, 71 S.Ct. 814 (1951)).

EPR wants this Court essentially to stay the "corporation's duty to respond to discovery." EPR's Mem. at 8 (quoting State Farm Mut. Auto. Ins. Co. v. Grafman, 04-CV-2609 (NG) (SMG), 2007 U.S. Dist. LEXIS 88277, at *16 (E.D.N.Y. Dec. 1, 2007)). However, the ICMO provides that discovery will proceed except as to the Targeted Defendants. ICMO ¶ 5. Thus, the ICMO permits discovery to proceed with respect to EPR, a point which was made by EPR's own counsel at the January 7, 2011, hearing. See Tr. at 24. Now, however, EPR has switched positions and argues, in effect, for a broadening of the ICMO. For the same reasons that the Court denied Plaintiffs' request for a broadening of the ICMO last January, it is unconvinced that it should grant a similar request now from EPR.

Rulings Re the Motion

In sum, the ICMO does not prohibit the interrogatories, and the Court concludes that discovery directed to EPR should not be stayed. To the extent that EPR argues to the contrary, its arguments are rejected.

"Rule 33(a) of the Federal Rules of Civil Procedure provides that where interrogatories are served on a corporation, the corporation must designate an agent who can 'furnish such information as is available to the party' on behalf of the corporation." Cent. States, Southeast & Southwest Areas Pension Fund v. Cartensen Freight Lines, Inc., No. 96 C 6252, 1998 WL 413490, at *4 (N.D. Ill. July 17, 1998); see also id. ("The Federal Rules simply require that the corporation select an agent who can 'gather and obtain from books, records, other officers or employees, or other source, the information necessary to answer the interrogatories"). **Accordingly, EPR is ordered to designate such agent and answer the interrogatories. See id.**

To the extent that a particular interrogatory requires⁵ EPR's agent to consult a Target Defendant and the Target Defendant refuses to provide the information sought, the agent shall, in the response to such interrogatory, (1) explain why the information can only be obtained from a Target Defendant and from no other source (e.g., company records or persons other than a Target Defendant) and (2) state verbatim the response which the agent received from the Target Defendant who declined to provide the information requested. To insure accuracy with respect to the latter requirement, any Target Defendant who declines to provide

⁵ By "requires," the Court means that the information cannot be obtained from any other source.

information to EPR's agent shall furnish the agent with a written statement stating the basis for the refusal. If Plaintiffs believe that the information can be obtained from some source other than a Target Defendant, Plaintiffs may file a motion to compel EPR to provide more responsive answers.⁶

Conclusion

Accordingly, the Motion is GRANTED to the extent stated above. To the extent that Plaintiffs seek greater relief than that stated above, the Motion is denied.

ENTER:

/s/ David L. Martin
DAVID L. MARTIN
United States Magistrate Judge
November 1, 2011

⁶ In the interest of limiting future motion practice, Plaintiffs are advised that if it appears that the information sought by a particular interrogatory can only be obtained from a Target Defendant, the Court in all probability will not grant a further motion to compel with respect to such interrogatory.