

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., ESTELA)
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;)

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;)

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;)

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.)
)

DEFENDANT ESTATE PLANNING RESOURCES, INC.’S
MOTION FOR RECONSIDERATION

Defendant Estate Planning Resources, Inc. (“EPR”) moves this Court for reconsideration of the Order Granting in Part Plaintiffs’ Motion to Compel Defendant Estate Planning Resources to Respond to Interrogatories (the “Order”) entered on November 1, 2011. For the reasons set forth in the accompanying memorandum, events that occurred after this Court entered the Order provide reason for reconsideration of the Order and denial of Plaintiff’s motion to compel EPR to respond to interrogatories. Accordingly, EPR respectfully requests that this Court grant this motion, vacate the Order and enter an order denying Plaintiffs’ motion to compel.

Dated: Providence, Rhode Island
March 22, 2012

ESTATE PLANNING RESOURCES, INC.,
By its Attorneys,

/s/ Adam M. Ramos
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CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2012, 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/ Adam M. Ramos

IN THE UNITED STATES DISTRICT COURT
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Plaintiff,)

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C.A. No. 09-470-S

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

TRANSAMERICA LIFE INSURANCE)
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C.A. No. 09-471-S

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WESTERN RESERVE LIFE ASSURANCE)
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JOSEPH CARAMADRE, RAYMOUR)
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RESOURCES, INC., HARRISON CONDIT,)
and FORTUNE FINANCIAL SERVICES,)
INC.,)
Defendants.)
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C.A. No. 09-564-S

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT
ESTATE PLANNING RESOURCES, INC.’S MOTION FOR RECONSIDERATION**

Defendant Estate Planning Resources, Inc. (“EPR”) submits this memorandum of law in support of its motion for reconsideration of the Order Granting in Part Plaintiffs’ Motion to Compel Defendant Estate Planning Resources to Respond to Interrogatories (the “Order”) entered on November 1, 2011. Events that occurred after this Court entered the Order make the Order ripe for reconsideration. Additionally, those same events make it impossible for EPR to comply with the Order. Accordingly, this Court should grant this motion, vacate the Order and enter an order denying Plaintiffs’ motion to compel.

RELEVANT BACKGROUND

Plaintiffs brought seven related cases against EPR and many other defendants for alleged misconduct in connection with the sale of annuities. Plaintiffs claim that the defendants all were involved in an alleged scheme to make money by purchasing annuities from Plaintiffs and naming terminally ill patients as the annuitants. Plaintiffs allege that in connection with this supposed scheme, the annuities were purchased with a death benefit rider that provided a guaranteed return on the investment, which was likely to be triggered because the annuitants

were terminally ill. Plaintiffs allege that EPR employed two other defendants, Joseph Caramadre and Raymour Radhakrishnan, who acted in furtherance of this supposed scheme by matching purchasers of annuities with the terminally ill annuitants.

The United States Attorney for the District of Rhode Island (“U.S. Attorney”) began an investigation of Defendants Caramadre, Radhakrishnan, Edward Maggiacomo, Jr., Harrison Condit and Edward Hanrahan (collectively, “Target Defendants”) in connection with the allegations Plaintiffs made in their complaints. The defendants in the civil suits moved to dismiss the complaints, and this Court dismissed several claims. Many of the defendants, including EPR, moved to stay the civil suits until the resolution of the criminal investigation. This Court did not stay the civil litigation at that time, but recognized that proceeding with the normal course of discovery in these civil suits would result in unfair prejudice to the Target Defendants in connection with both the criminal investigation and the civil litigation. Thus, the Court directed the parties to come to an agreement on an order that would allow some discovery to proceed, but also would protect the Target Defendants from the prejudice that might result from either answering discovery requests or being forced to invoke their Fifth Amendment privilege against self-incrimination.

The parties complied with the Court’s directive and agreed to the Initial Case Management Order (ECF No. 58 in Case No. 09-470) (the “ICMO”). The ICMO provided several protections for the Target Defendants: (1) they were required to serve only draft answers to the complaints without asserting counterclaims if any of Plaintiffs’ new claims survived motions to dismiss;¹ (2) they would be required to produce documents in response to requests for production pursuant to an agreement concerning the source and authentication of the documents

¹ In the ICMO, the Court granted Plaintiffs leave to file amended complaints and set forth a schedule for defendants to file new motions to dismiss.

and would have a right to seek a non-disclosure order if any documents they produced became the subject of a subsequent request or subpoena; and (3) they would not be required to respond to any interrogatories or requests for admission, or testify at any depositions, either on their own behalf, “**or on behalf of an organization[.]**” (Emphasis added). In exchange, Target Defendants agreed not to propound any interrogatories or requests for admission, or to notice any depositions.

Plaintiff served interrogatories on EPR in all seven cases. EPR, through counsel, provided responses to all the interrogatories in all seven cases on August 12, 2011, stating in response to each interrogatory:

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 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.

Plaintiffs moved to compel EPR to provide substantive answers on September 26, 2011. EPR objected and argued (1) that the ICMO prohibited the interrogatories because EPR could answer the Interrogatories only through Target Defendants, and (2) that the law calls for a stay of discovery from an organization when the responses to the discovery requests necessarily must come from the target of a criminal investigation. EPR further argued that Caramadre (a Target

Defendant) was the only person capable of providing the information necessary to respond to the interrogatories.²

The Court granted Plaintiffs' motion to compel, in part, on November 1, 2011. The Court set forth a procedure for EPR to answer the interrogatories without unduly interfering with the constitutional rights of the Target Defendants. First, the Court ordered EPR to designate an agent to answer the interrogatories. *See* ECF No. 122 in Case No. 09-470 at 10. Then the Court set forth the precise steps that the agent must take to answer the interrogatories:

To the extent that a particular interrogatory requires 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 information to EPR's agent shall furnish the agent with a written statement stating the basis for the refusal.

Id. at 10-11 (internal footnote omitted).³

Following the Court's order granting Plaintiff's motion to compel, EPR worked toward complying with the order. EPR identified and designated an agent and began to provide the agent with access to the information in EPR's files to prepare responses to the interrogatories. *See* Memorandum in Support of Emergency Motion of Estate Planning Resources, Inc. for Appointment of an Agent to Answer Interrogatories (ECF No. 126 in Case No. 09-470); Declaration of Adam Ramos, Esq. in Support of Defendant Estate Planning Resources, Inc.'s Emergency Motion for Appointment of an Agent to Answer Interrogatories (ECF No. 127 in

² EPR incorporates in full the arguments set forth in the Memorandum of Law in Support of Defendant Estate Planning Resources, Inc.'s ("EPR") Objection to Plaintiffs' Motion to Compel EPR to Respond to Interrogatories (ECF No. 119 in Case No. 09-470). A copy of that memorandum is attached as Exhibit A.

³ The Court explained that an answer to an interrogatory only "requires" the agent to consult with a Target Defendant if the information sought by the interrogatory "cannot be obtained from any other source." *Id.* at 10 n.5.

Case No. 09-470).⁴ On November 17, 2011, the U.S. Attorney issued a 66-count indictment against Caramadre and Radhakrishnan. *See* Exhibit C at ¶ 8. As a result of the indictment, the third-party agent was advised by counsel that he should no longer serve as EPR's agent for purposes of answering the interrogatories. *See* Exhibit C at ¶ 10. Caramadre has been unable to find any person to serve as an agent to answer the interrogatories. *See* Ramos Declaration at ¶ 11. EPR moved for an emergency extension of time to respond to the interrogatories on November 22, 2011. The Court granted that motion allowing EPR up to and including December 12, 2011 to provide answers. *See* Exhibit B. EPR moved the Court to appoint an agent on its behalf to answer the interrogatories. *See* Exhibit B.

Many defendants filed renewed motions to stay the civil litigation because of the indictment. *See, e.g.*, Emergency Renewed Motion for Partial Stay of Defendants Joseph Caramadre, Raymour Radhakrishnan, Estella Rodrigues and ADM Associates, LLC (ECF No. 125 in Case No. 09-470). These motions were filed contemporaneously with EPR's motion seeking appointment of an agent. EPR's motion for the appointment of an agent was conditioned on a denial of the renewed motions to stay (because EPR understood that a stay of the litigation would obviate the need for imminent interrogatory answers until the court removed the stay). *See* Exhibit B.

The Court held a chambers conference to discuss the pending motions, including motions to dismiss the complaints, on December 9, 2011. The parties and the Court discussed the parameters of any potential stay, the pending motions to dismiss, and the status of EPR's obligation to respond to the interrogatories. The Court decided that it would allow Plaintiffs to file oppositions to the motions to stay and would reserve decision on the motions to stay until

⁴ Copies of ECF No 126 in Case No. 09-470 and ECF No. 127 in Case No. 09-470 are attached as Exhibits B and C respectively.

after it decided the pending motions to dismiss. The Court also entered a text order “staying the deadline for Estate Planning Resour[c]es, Inc.’s answer to interrogatories until the Court decides [125] Emergency Motion to Stay in Part by Joseph Caramadre, Raymour Radhakrishnan, ADM Associates, LLC and Estella Rodrigues” on December 12, 2011.

The Court entered its Opinion and Order on the motions to dismiss on February 7, 2012 and dismissed many of the claims in the various complaints – **including all claims against EPR in case No. 09-470**. The Court also scheduled another chambers conference for February 22, 2012. The parties again discussed whether a stay should enter and what the parameters of any stay should be at the February 22, 2012 chambers conference. The Court concluded at the chambers conference that a stay should enter, with some exceptions, and directed the parties to submit a stay order to the Court for entry. The parties submitted two competing stay orders, and the Court entered an order granting the motions to stay all the cases on March 2, 2012.⁵ The stay order specifically stated that “Estate Planning Resources, Inc.’s (“EPR”) obligation to respond to the interrogatories propounded by the Plaintiffs pursuant to the Order Granting in Part Plaintiffs’ Motion to Compel Defendant Estate Planning Resources to Respond to Interrogatories (ECF No. 122 in Case No. 09-470) is stayed pending the resolution of a forthcoming motion for reconsideration of that order that EPR will file.” *See* Exhibit D (ECF No. 134 in Case No. 09-470).

ARGUMENT

The factual and procedural developments in this case since the Court entered the Order granting Plaintiffs’ motion to compel clearly support reconsideration. The following significant events occurred since the Court ordered EPR to answer the interrogatories:

- The U.S. Attorney indicted Caramadre and Radhakrishnan;

⁵ A copy of the stay order is attached as Exhibit D.

- The agent EPR identified to answer the interrogatories will no longer serve as agent – and no replacement can be found;
- The Court decided the motions to dismiss and dismissed many counts in the complaints, including all counts against EPR in one of the cases; and
- The Court entered an order staying the civil litigation with only limited exceptions: (1) motions for entry of final judgment by defendants with no remaining claims against them, (2) limited document discovery, and (3) this motion for reconsideration of the Order.

Additionally, EPR has been reduced to a shell corporation. It has no employees. It has no office. EPR continues to exist only because of its status as a defendant in these civil suits.

“[T]he considerations that govern the filing of a motion for reconsideration are very flexible.” *Penobscot Indian Nation v. Key Bank*, 112 F.3d 538, 563 (1st Cir. 1997). “Not every motion must fit within some neat pigeonhole.” *Jusino v. Zayas*, 875 F.2d 986, 990 n.10 (1st Cir. 1989). “There comes a time when courts must be practical.” *Id.* at 990. A district court “has substantial discretion and broad authority to grant” a motion for reconsideration. *Ruiz Rivera v. Pfizer Pharms., LLC*, 521 F.3d 76, 81 (1st Cir. 2008). A motion for reconsideration should be granted in the case of a manifest error of law, newly discovered evidence, or when “the court ‘has patently misunderstood a party . . . or has made an error not of reasoning but apprehension.’” *Id.* at 81-82 (quoting *Sandoval Diaz v. Sandoval Orozco*, No. 01-1022, 2005 U.S. Dist. LEXIS 12462, 2005 WL 1501672, at *2 (D.P.R. June 24, 2005)). A court can properly consider new facts that arise after the initial decision as new evidence in support of a motion for reconsideration. *See Smith v. R.I. State Servs. for the Blind and Visually Handicapped*, 581 F. Supp. 566, 575 (D.R.I. 1984) (remarking that no new facts arose after the

initial hearing that give rise to a need for reconsideration). ““Interlocutory orders, including denials of motions to dismiss, remain open to trial court reconsideration, and do not constitute the law of the case.”” *W. Reserve Life Assur. Co. v. Caramadre*, 2012 U.S. Dist. LEXIS 14327, * 18 (D.R.I. Feb. 7, 2012) (quoting *Perez-Ruiz v. Crespo-Guillen*, 25 F.3d 40, 42 (1st Cir. 1994)).

The Court should reconsider the Order. First, the intervening indictment of Caramadre and Radhakrishnan magnifies the danger of potentially self-incriminating statements made by either one of them in answering the interrogatories on behalf of EPR. First, the indictment is a new fact that strengthens the argument that EPR cannot answer the interrogatories. The threat of an indictment which prompted this Court to enter the ICMO has now ripened into a formally returned and filed indictment. Even the meticulously designed process set forth by the Court in the Order does not provide sufficient protection in light of this new fact. The Order allows Target Defendants to refuse to provide information to the agent in response to an interrogatory in reliance on the ICMO. However, such a response would be directly traceable back to the invocation of Fifth Amendment privilege and likely result in the very same prejudice that the ICMO was designed to prevent.

Second, EPR’s inability to identify an agent willing to respond to the interrogatories on its behalf is an additional new fact that warrants reconsideration of the Order. When this Court entered the Order, Caramadre and Radhakrishnan had not yet been indicted. The indictment has proved to be an insurmountable obstacle to EPR’s attempt to designate an agent to provide responses. Moreover, the cost of this litigation and the concomitant criminal investigation and prosecution has depleted Caramadre’s funds to the point where he can no longer afford to pay attorneys. Caramadre is the only person associated with EPR. EPR has no assets. As the Court recognized at the February 22, 2012 chambers conference, it is unlikely that any person

designated to serve as EPR's agent would be paid for the provision of such services. The Court declined to appoint an agent, in part, for that very reason. Thus, as a practical matter, the new developments since the entry of the Order make it impossible for EPR to comply with the Order.

Third, and perhaps most importantly, the new fact of the Court's decision to stay the civil litigation until the conclusion of the criminal prosecution also militates strongly in favor of reconsideration. The Order does not allow for any other interrogatories, requests for admission or depositions (written or oral). The only discovery permitted is any additional document discovery, for which the restrictions set forth in the ICMO remain in place. There is no prejudice to Plaintiffs if EPR is relieved of the obligation to respond to the interrogatories. Granting reconsideration will simply put EPR on the same footing as the rest of the remaining defendants in these cases.⁶

CONCLUSION

For the reasons stated herein, EPR respectfully requests that the Court: (1) grant this motion for reconsideration; (2) vacate the order compelling EPR to answer the interrogatories propounded by Plaintiffs in these matters; and (3) enter an order denying Plaintiffs' motion to compel EPR to answer the interrogatories.

⁶ Additionally, there are no claims remaining against EPR in Case No. 09-470. EPR is moving for entry of final judgment in its favor in that case simultaneously with the filing of this motion. At the very least, reconsideration of the Order is necessary to relieve EPR of the obligation to respond to discovery in Case No. 09-470 because it is no longer a defendant in that case.

Dated: Providence, Rhode Island
March 22, 2012

ESTATE PLANNING RESOURCES, INC.,
By its Attorneys,

/s/ Adam M. Ramos
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/s/ Adam M. Ramos