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

WESTERN RESERVE LIFE ASSURANCE CO. OF OHIO, Plaintiff, vs. JOSEPH CARAMADRE, RAYMOUR RADHAKRISHNAN, ESTATE PLANNING RESOURCES, INC., HARRISON CONDIT, and FORTUNE FINANCIAL SERVICES, INC., Defendants;	C.A. No. 09-470-S
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;	C.A. No. 09-471-S
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;	C.A. No. 09-472-S

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-S
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-S
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-S

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

PLAINTIFFS' OBJECTION TO ESTATE PLANNING RESOURCES INC.'S MOTION FOR RECONSIDERATION

Plaintiffs Western Reserve Life Assurance Co. of Ohio and Transamerica Life Insurance Company (together "Plaintiffs") object to motions for reconsideration filed by defendant Estate Planning Resources, Inc. [Dkt. 136 in C.A. No. 09-470]

Plaintiffs file herewith a supporting memorandum of law.

Respectfully submitted on this 10th day of April, 2012.

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IN THE UNITED STATES DISTRICT COURT
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WESTERN RESERVE LIFE ASSURANCE CO. OF OHIO, Plaintiff, vs. JOSEPH CARAMADRE, RAYMOUR RADHAKRISHNAN, ESTATE PLANNING RESOURCES, INC., HARRISON CONDIT, and FORTUNE FINANCIAL SERVICES, INC., Defendants;	C.A. No. 09-470-S
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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;	C.A. No. 09-472-S

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-S
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-S
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-S

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

MEMORANDUM IN SUPPORT OF PLAINTIFFS' OBJECTION TO ESTATE PLANNING RESOURCES INC.'S MOTION FOR RECONSIDERATION

Plaintiffs Western Reserve Life Assurance Co. of Ohio ("WRL") and Transamerica Life Insurance Company ("Transamerica") (together "Plaintiffs") object to Defendant Estate Planning Resources, Inc.'s ("EPR") motion asking this Court to reconsider its order directing EPR to respond to Plaintiffs' interrogatories by November 22, 2011.[1] See Order entered November 1, 2011, attached hereto as Exhibit A ("Discovery Order").

BACKGROUND

EPR's motion is an epilogue to a discovery dispute that Magistrate Judge Martin settled long ago. In granting Plaintiffs' motion to compel EPR to answer interrogatories, Magistrate Judge Martin focused on EPR's representation to the Court on January 7, 2011, that "there's nothing … that prevents the plaintiffs or any of the other parties from propounding interrogatories to" EPR. Id. at p.7. EPR's counsel made that representation to the Court while arguing why EPR should be allowed to propound interrogatories to Plaintiffs, even when this

[1] The Discovery Order does not provide a specific compliance deadline. Pursuant to LR Cv 37(b), however, a response was due within 21 days of the issuance of the order.

Court's Initial Case Management Order[2] ("ICMO") prevented its President, Joseph Caramadre, from doing so.

Eight months after telling the Court that Plaintiffs were free to propound interrogatories to EPR, EPR "decline[d] to respond" to each and every one of Plaintiffs' interrogatories because, it contended, the ICMO shielded EPR from responding. See Interrogatory Answers of EPR appended to Exhibit A to Memorandum of Law in Support of Defendant [EPR's] Motion for Reconsideration ("EPR Mem."). Plaintiffs promptly moved to compel. See Exhibit C. Magistrate Judge Martin saw through EPR's gamesmanship and observed that "EPR's reversal of position on this issue diminishes its credibility." Discovery Order at p.7. Accordingly, on November 1, 2011, Magistrate Judge Martin ordered EPR to respond fully.

In ordering EPR to respond, Magistrate Judge Martin was sensitive to the (unasserted) Fifth Amendment rights of Caramadre and Radhakrishnan, whom EPR's counsel said were the only individuals who could provide substantive information for EPR to respond to the interrogatories. Accordingly, he directed EPR to designate any other person to serve as an agent to answer the interrogatories. Id. at p. 10. He also carefully accounted for the fact that the agent may want to obtain certain information from Caramadre or Radhakrishnan, who may refuse to cooperate. In that case,

> 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.

[2] Filed September 9, 2010 [Doc. 58 in C.A. No. 09-470].

Id.

EPR claims that following the entry of the Discovery Order it designated an unidentified agent to prepare interrogatory answers. Before EPR provided its answers, the U.S. Attorney issued an indictment against Caramadre and Radhakrishnan. EPR claims that, at that point, "counsel" advised the agent not to assist in preparing EPR's interrogatory answers. Counsel for Caramadre and EPR will not identify the "counsel" who allegedly instructed the agent to not cooperate. See Exhibit B.

On March 2, 2012, the Court entered an order staying most discovery, but leaving open the question of whether it would reconsider ordering EPR to answer interrogatories. For the reasons set forth below, EPR's motion should be denied.

ARGUMENT

"While the Federal Rules do not provide for a motion to reconsider, a district court has the inherent power to reconsider its interlocutory orders ...." Fernandez–Vargas v. Pfizer, 522 F.3d 55, 61 n. 2 (1st Cir.2008) (internal quotation marks omitted). However, "motions for reconsideration are appropriate only in a limited number of circumstances: if the moving party presents newly discovered evidence, if there has been an intervening change in the law, or if the movant can demonstrate that the original decision was based on a manifest error of law or was clearly unjust." United States v. Allen, 573 F.3d 42, 53 (1st Cir.2009) (citing Marie v. Allied Home Mortg. Corp., 402 F.3d 1, 7 n. 2 (1st Cir.2005)).

EPR advances three reasons why it believes this Court should reconsider its order compelling EPR to respond to interrogatories. None of them, however, justifies reconsideration of Magistrate Judge Martin's Discovery Order. Id.

EPR contends that the indictment of Caramadre and Radhakrishnan is a "new fact that strengthens the argument that EPR cannot answer the interrogatories." EPR Mem. at p.10. This argument rings hollow. First, Magistrate Judge Martin already considered and rejected the contention that Caramadre and Radhakrishnan are the only potential sources of information necessary to respond to many of Plaintiffs' interrogatories. Discovery Order at p.8. And even if consultation with Caramadre or Radhakrishnan were necessary, the Discovery Order provides adequate protection to them if they do not want to assist in the preparation of EPR's responses. EPR's contention that its interrogatory answers "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" was the precise argument that Magistrate Judge Martin considered and rejected in issuing the Discovery Order, which EPR did not appeal. "[M]otions for reconsideration are not to be used as 'a vehicle for a party to undo its own procedural failures…." Allen, 573 F.3d at 53 (quoting Iverson v. City of Boston, 452 F.3d 94, 104 (1st Cir.2006)). And ultimately – given the protections available to Caramadre and Radhakrishnan under the Discovery Order - the indictment does not raise any new Fifth Amendment concerns that were not accounted for when Magistrate Judge Martin issued the Discovery Order.

EPR also suggests that its alleged inability to enlist a willing agent to sign interrogatory answers constitutes a "new fact" that warrants reconsideration of the Discovery Order. EPR Mem. at p.10. This argument should be rejected outright. Despite Plaintiffs' inquiry, EPR will not even say if its attorneys or Caramadre are the "counsel" who supposedly advised the agent to withdraw. See Exhibit B. Having refused to clarify this basic fact so the Court can fully

consider the source or significance of the "advice," the affidavit of EPR's trial attorneys should be disregarded.[3]

Moreover, EPR's claimed financial inability to hire an agent is wholly disingenuous. Even if the Court believes that EPR's initial agent was diligently working to provide interrogatory answers until the indictment was issued, it is important to note that the indictment was issued only three business days before the answers were due pursuant to the Discovery Order. Therefore, the yeomen's work of preparing the response should already be complete and the cost to finalize the answer should be nominal – likely far less than the cost of preparing and arguing EPR's Motion For Reconsideration.

Despite the claim that it has been reduced to a "shell of a corporation" - EPR has found a way to muster up enough financial resources to engage in lengthy motion practice to obtain discovery from Plaintiffs, and to avoid responding to Plaintiffs' discovery. Also, rather than taking advantage of the current stay to conserve financial resources, EPR is now seeking partial final judgment in C.A. No. 09-470, which would cause the parties to devote significant financial resources to an appeal. If EPR truly is a "shell of a company," it is only because Caramadre has siphoned off assets that it had when it told the Court that Plaintiffs were free to propound interrogatories to it. And, ultimately, EPR's financial status does not excuse it from complying with discovery.

Next, the fact that the Court has dismissed some counts against EPR does not relieve it from participating in discovery.[4] Several counts remain pending against EPR and the interrogatories are relevant to them. EPR does not even attempt to argue otherwise.

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[3] It is ironic that EPR states that its attorneys cannot sign interrogatory answers, but that they can provide substantive facts to justify why they need not respond to discovery. As discussed in Plaintiffs' Motion to Compel, which is attached as Exhibit C and incorporated herein by reference, EPR has several options for designating an agent to respond to interrogatories.

Finally, the fact that the Court entered a partial stay of discovery should not excuse EPR from responding to interrogatories. Plaintiffs propounded the interrogatories over nine months ago. Had EPR honored its own representation to the Court that "there's nothing in this protective order or in this [ICMO] that prevents the plaintiffs or any of the other parties from propounding interrogatories to [EPR]," Discovery Order at p.7, it would have provided substantive answers well before the indictment was issued or the current stay entered. EPR should not be rewarded for the contradictory and dilatory arguments Magistrate Judge Martin found incredible.

CONCLUSION

For the reasons set forth herein, the Court should decline to reconsider Magistrate Judge Martin's Discovery Order for EPR to respond to Plaintiffs' interrogatories.

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[4] The interrogatories in each case seek information that is specific to the annuities in the respective case. The interrogatories in C.A. No. 09-470, however, include additional interrogatories that are relevant to all cases, such as the identity of individuals with an interest in EPR (Interrogatory No. 10) and statements made to law enforcement authorities (Interrogatory No. 11). In an effort to avoid receiving (and forcing EPR to provide) duplicative information in all seven cases, Plaintiffs did not repeat these universally applicable interrogatories in every case. Although all claims against EPR have been dismissed in C.A. No. 09-470, it should not be excused from providing the information sought in these interrogatories. First, WRL intends to file a motion to assert claims against EPR in that case for conspiracy and criminal acts. The Court has already considered such claims against EPR in the context of other cases held that they have merit. Therefore, it is incorrect for EPR to assume that it is no longer involved in C.A. No. 09-470. Moreover, claims against EPR were pending in C.A. No. 09-470 when the interrogatories were propounded and EPR ought to have provided its responses.

Dated: April 10, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the within document was electronically filed with the clerk of the court on April 10, 2012, 2012, and that it is available for viewing and downloading from the Court's ECF system. Service by electronic means has been effectuated on all counsel of record.

/s/ Michael J. Daly