

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

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

WESTERN RESERVE LIFE ASSURANCE)	
COMPANY OF OHIO)	
Plaintiff,)	
)	C.A. No. 09-473/S
v.)	
)	
JOSEPH CARAMADRE, RAYMOUR)	
RADHAKRISHNAN, ESTATE PLANNING)	
RESOURCES, INC, DK LLC, EDWARD)	
HANRAHAN, THE LEADERS GROUP, INC. and)	
JASON VEVEIROS,)	
Defendants.)	

PLAINTIFF’S MOTION TO AMEND COMPLAINTS

Plaintiff, Western Reserve Life Assurance Co. of Ohio (“Western Reserve”), moves pursuant to Fed. R. Civ. P. 15 to amend its complaints in the above captioned matters in the forms attached hereto as Exhibit A (C.A. No. 09-470) and Exhibit B (C.A. No. 09-473).

Western Reserve files herewith a supporting memorandum of law.

Respectfully submitted,

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Dated: May 1, 2012

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RESOURCES, INC, HARRISON CONDIT and)	
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WESTERN RESERVE LIFE ASSURANCE)	
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JOSEPH CARAMADRE, RAYMOUR)	
RADHAKRISHNAN, ESTATE PLANNING)	
RESOURCES, INC, DK LLC, EDWARD)	
HANRAHAN, THE LEADERS GROUP, INC. and)	
JASON VEVEIROS,)	
Defendants.)	

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S
MOTION TO AMEND COMPLAINTS**

Plaintiff, Western Reserve Life Assurance Co. of Ohio (“Western Reserve”), moves pursuant to Fed. R. Civ. P. 15 to file amended complaints in C.A. No. 09-470 and C.A. No. 09-473. The purposes of the amendments are:

in **C.A. No. 09-470 and C.A. No. 09-473**

To specify that Western Reserve’s fraudulent inducement claims are based partially on affirmative misrepresentations that defendants Harrison Condit (in C.A. No. 09-470) and Edward

Hanrahan (in C.A. No. 09-473) made in the applications to obtain annuities at issue in each respective case;

and, in **C.A. No. 09-470**

- 1) to add defendants Joseph Caramadre, Raymour Radhakrishnan and Estate Planning Resources, Inc. (“EPR”) as defendants to Count VI (civil liability for crimes and offenses); and
- 2) to add a new count (Count IX) for civil conspiracy against all defendants in C.A. No. 09-470.

BACKGROUND

These cases are two of seven related actions¹ that arise out of a Stranger Owned Annuity Transaction (“STAT”) scheme conceived of and orchestrated by Caramadre. In connection with the various cases, Western Reserve and Transamerica Life Assurance Company (“Transamerica”) (together “Plaintiffs”) have asserted claims against Caramadre, Radhakrishnan, EPR (together “Sponsors”), Harrison Condit, Edward Maggiacomo, Edward Hanrahan (together “Agents”), Fortune Financial Services, Inc., The Leaders Group, Inc. and Lifemark Securities Corp. (together “Brokers”) for, among other things, fraud, breach of contract, conspiracy, and civil liability for criminal acts.

Western Reserve initially filed the complaints in C.A. No. 09-470 and C.A. no. 09-473 in October, 2009.² On June 2, 2010, the Court issued an Opinion and Order (hereafter “First

¹ The additional related actions are docketed as C.A. No. 09-471; C.A. No. 09-472; C.A. No. 09-502; C.A. No. 09-549; and C.A. No. 09-564.

² Western Reserve filed its initial complaint on October 1, 2009. On October 16, 2009, Western Reserve filed Amended Complaints to refer to the correct contracts between it and the Brokers in the respective actions.

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Dismissal Order”) granting in part and denying in part motions to dismiss filed by the various defendants.

Western Reserve filed Second Amended Complaints on September 7, 2010. The primary purpose of the amendments in C.A. No. 09-470 was to account for Western Reserve’s confirmation that the annuity at issue in that case was the product of Caramadre’s STAT scheme. Accordingly, the Second Amended Complaint in C.A. No. 09-470 described the STAT scheme generally, added the Sponsors as defendants to the fraudulent inducement count and specified that an additional basis of liability for the criminal acts count against Condit and Fortune Financial was forgery of the annuitant’s signature to the annuity application. The Second Amended Complaint also added a count against all defendants (including the Sponsors) for fraud in the factum.³

The purpose of the September 7, 2010 amendments in C.A. No. 09-473 was primarily to seek relief based on a theory of fraud in the factum.⁴

Western Reserve filed Third Amended Complaints on March 7, 2011 in C.A. No. 09-470 and C.A. No. 09-473. The purpose of those amendments was to assert claims against Condit (in C.A. No. 09-470) and Hanrahan (in C.A. No. 09-473) for breach of contract and breach of the duty of good faith and fair dealings.

Several defendants filed motions for the Court to reconsider the First Dismissal Order and to dismiss counts asserted after the First Dismissal Order was issued. On February 7, 2012, the Court issued another Opinion and Order (“Second Dismissal Order”), declining to reconsider

³ Conreal LLC (the annuity owner) and Anthony Pitocco (the annuitant) were named as defendants in the preceding complaints in connection with counts for rescission and declaratory judgment. Prior to filing the Second Amended Complaint, Conreal agreed that the annuity had been rescinded. Therefore, those counts and Conreal and Pitocco were omitted from the Second Amended Complaint (and all subsequent pleadings).

⁴ The sponsors were named defendants in the original complaint filed in C.A. No. 09-473.

its rulings in the First Dismissal Order. In doing so, the Court reiterated that the Complaints assert valid claims against the Agents for fraudulent inducement. See id. at p.19. In the Second Order, however, the Court commented that, unlike the complaints in all the other cases, the operative complaints in C.A. No. 09-470 and C.A. No. 09-473 do not allege fraud based on the Agents' affirmative misrepresentation in the annuity applications that they were substantively involved in selling the annuities and that they reviewed and verified any of the information on the applications. See Second Dismissal Order at p. 19, n.12. Accordingly, the Court noted that "Plaintiffs fail to make out a claim of fraudulent inducement grounded in affirmative statements against the Agents in" C.A. No. 09-470 and C.A. No. 09-473.

In the Second Dismissal Order, the Court also reanalyzed the fraud counts asserted against the Sponsors and reaffirmed that those counts could not survive against them because there was no direct relationship between the Sponsors and the Plaintiffs. See Second Dismissal Order at pp. 20-22. The Court went on to observe, however, that that "this may have no practical effect in most of the instant cases because ... the civil conspiracy counts against the Sponsors survive ... and if proven, the Sponsors may be held jointly liable for the Agents' fraud." Id. at pp. 20-22, n.13. In doing so, the Court pointed out that C.A. No. 09-470 "does not allege civil conspiracy against any defendants." Id.

The Court also addressed Plaintiffs' claims against the various defendants for civil liability based on criminal acts. See id. at pp. 38-39. The Court held that, although such counts were previously dismissed to the extent they were predicated on violations of the criminal insurance fraud statute, the counts were revived in C.A. No. 09-470 (against Condit and Fortune Financial), C.A. No. 09-549 (against the Sponsors, Maggiacomo and Lifemark) and C.A. No. 09-564 (against the Sponsors, Condit and Fortune Financial) based on the allegations of forgery in

violation of § 11-17-1. Accordingly, the Court held that the counts for civil liability for crimes and offenses asserted in those cases could proceed based on the underlying crime of forgery. Although the complaint in C.A. No. 09-470 alleges that the Sponsors were actively involved in the forgery of the annuitant's signature, they were not specifically named as defendants in connection with the "criminal acts" count (Count VIII).

Western Reserve now moves to amend the pleadings to assert claims against the defendants in C.A. No. 09-470 and C.A. No. 09-473 that the Court already has deemed valid in the context of the related civil actions.

ARGUMENT

Rule 15(a) provides that "[t]he court should freely give leave when justice so requires." Fed. R. Civ. Proc. 15 (a)(2). "If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits." Forman v. Davis, 371 U.S. 178, 182 (1962). Leave to amend should be granted in the "absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failures to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party ..., futility of amendment, etc...." Id.; Torres-Alamo v. Puerto Rico, 502 F.3d 20, 25-26 (1st Cir. 2007); Cathedral Art Metal Co. v. Giftco, Inc., 2010 WL 936219, *1 (D.R.I. 2010).

The filing of the amended pleading would not unfairly prejudice any of the defendants. The Court already has held that Western Reserve has legally cognizable claims against defendants based on the same allegations and theories asserted in the proposed amended

pleadings.⁵ With respect to the proposed clarification of the fraudulent misrepresentation claims asserted against Condit and Hanrahan, the Court has held that the affirmative representations in the applications could support claims for fraud in C.A. No. 09-472 (Hanrahan) C.A. No. 09-564 (Condit). See Second Dismissal Order, at p. 19, n.12. Likewise, the Court has held that allegations of forgery by the Sponsors could support claims against them for civil liability for criminal acts in C.A. No. 09-549 and C.A. No. 09-564. See Second Dismissal Order at pp. 38-39. Finally, the Court has confirmed that the alleged conduct of the Sponsors, Condit and Fortune Financial supports a claim for civil conspiracy in the context of C.A. No. 09-564. See First Dismissal Order at pp. 27-29; Second Dismissal Order at p. 22, n.13 and pp. 37-38. Particularly because the Court has already ruled – in the context of other cases - that the new counts sought to be asserted or clarified in C.A. 09-470 and C.A. No. 09-473 “may be a proper subject of relief,” Western Reserve “ought to be afforded an opportunity to test [its] claim[s] on the merits” in the context of these cases. Forman, 371 U.S. at 182.

Moreover, the proposed amended complaints do not add any new or unknown factual allegations against defendants. With respect to C.A. No. 09-470, the existing complaint alleges that all defendants were involved in the forgery of Mr. Pitocco’s (the annuitant) signature, that they “acted in concert” in connection with the overall fraudulent scheme and that Condit had no relationship with the annuity owner or Mr. Pitocco, despite his representations in the application. See, e.g., Third Amended Complaint at ¶¶ 41, 45, 48-52 (Doc. 91 in C.A. No. 09-470). The proposed amendments simply clarify the causes of action based upon the facts already alleged.

Likewise, the proposed amendments in C.A. No. 09-473 do not raise new or surprising facts. Rather, they clarify that Western Reserve’s fraudulent inducement count is based in part

⁵ The proposed amended pleadings include counts that the Court has dismissed. Western Reserve reasserts those counts only to preserve its appellate rights.

on the affirmative misrepresentations made by Hanrahan in the annuity application concerning his involvement in the application process. The existing pleading already alleges that he had no relationship with the annuity owner or annuitant. See Third Amended Complaint at ¶ 61 (Doc. 113 in C.A. No. 09-473).

Western Reserve has not acted in bad faith by failing to assert the claims and theories previously. Moreover, no defendants have suffered any unfair prejudice as a result of the omissions. The delay in asserting the new counts is not unreasonable or unfair. To date, very little substantive discovery has been conducted because of the parallel criminal investigation and, now, prosecution of Caramadre and Radhakrishnan. Regardless, the factual allegations that support the new counts, as well as the theories of liability, have been well known to defendants. As the case progresses, the defendants will have the opportunity to challenge the merits of the proposed new claims at the same time they are defending identical claims in C.A. No. 09-472, C.A. No. 09-549 and C.A. No. 564.

CONCLUSION

Because the proposed new counts are legally valid and defendants would not be unfairly prejudiced by the proposed amendments, Western Reserve respectfully requests that it be permitted to file the Fourth Amended Complaints in the forms attached hereto as Exhibits A and B.

Respectfully submitted,

/s/ Brooks R. Magratten
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Dated: May 1, 2012

CERTIFICATE OF SERVICE

I certify that the within Motion and Memorandum were electronically filed with the clerk of the court on May 1, 2012, and that they are 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