

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

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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;

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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;

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

Defendants'<sup>1</sup> objections to plaintiff Western Reserve Life Assurance Co. of Ohio's ("WRL") motion to amend<sup>2</sup> are based on a flawed interpretation of this Court's March 2, 2012, Stay Order. Defendants suggest that the Stay Order prohibits WRL from asking the Court for

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<sup>1</sup> The objection filed jointly by Caramadre, Radhakrishnan, Estate Planning Resources, Inc and Harrison Condit is docketed as ECF No. 145 in C.A. No. 09-470. Hanrahan "join[ed]" in that objection. See ECF No. 146 in C.A. No. 09-470. Fortune Financial has not objected to Western Reserve's motion to amend.

<sup>2</sup> ECF No. 141 in C.A. No. 09-470.

leave to file its amended complaints. Contrary to defendants' claim, the restrictions the Stay Order are focused on discovery activity; there is no prohibition on any party making a request to the Court.

Prior to entering the Stay Order, the Court considered and rejected Defendants' request to prohibit parties from filing motions. Following a chambers conference on February 22, 2012, the parties submitted proposed stay orders for the Court's consideration. See Exhibit A. Defendants' proposed order contained a provision stating: "6. No other discovery, motion practice or other litigation activity other than those set forth in paragraphs 2 through 5 of this Order is required or permitted." Id. (emphasis added). Although adopting all other provisions of Defendants' proposed order verbatim, the Court rejected their effort to impose a blanket prohibition on motion practice and specifically struck Defendants' reference to a stay of "motion practice or other litigation activity...." Instead, the Court directed that "no other discovery, other than that set forth in this Order, is permitted without leave of the Court. To the extent Plaintiffs attempt to engage in any other litigation activity that Defendants believe is inconsistent with this Order, Defendants may move to stay that activity." The Court's specific deletion of the terms "motion practice or other litigation activity" reflects the tenor of the discussions during the February 22, 2012 chambers conference: that if any parties sought to conduct discovery other than what was specifically authorized in the Stay Order, then they should seek leave of Court.

WRL's submission of a motion to amend the complaints is in compliance with the Stay Order. Indeed, it is inconceivable that any litigant ever would be prohibited from making a request to the Court. Moreover, the timing of WRL's motions to amend springs from Defendants' motions for entry of partial final judgment, in which they contend the lack of pending claims supports their request for judgment. Based on those arguments, full and fair

consideration of Defendants' motions for judgment requires that WRL's motion to amend be considered.<sup>3</sup>

Finally, Defendants' reliance on the Stay Order to oppose a motion to amend is substantively flawed. The Stay Order provides a remedy if Defendants believe WRL has violated it: they "may move to stay that activity." See Stay Order at ¶6. Defendants have not sought to take advantage of the procedural protection afforded to them in the Stay Order and, therefore, have waived any arguable basis to hide behind it to prevent consideration of WRL's motion.

Defendants should not be permitted to file a second objection to WRL's motions to amend. In opposing WRL's motions, they were obligated to raise all reasons they believe support their position. They made a strategic decision to limit their arguments and their objections should be considered accordingly.

Respectfully submitted,

/s/ Brooks R. Magratten

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<sup>3</sup> Although the pendency of claims is relevant to Rule 54(b) final judgment analysis, that issue is not dispositive. As discussed in Plaintiffs' opposition to defendants' motions for final judgment (ECF No. 137 in C.A. No. 09-470), several other factors militate against entry of immediate judgment.

{W3139557.1}

**CERTIFICATE OF SERVICE**

I certify that the within document was electronically filed with the clerk of the court on June 4, 2012, and that it is available for viewing and downloading from the Court's CM/ECF system. Service by electronic means has been effectuated on all counsel of record.

/s/ Michael J. Daly\_\_\_\_\_