

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

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

Defendants.

**DEFENDANT FORTUNE FINANCIAL SERVICES, INC.'S
REPLY MEMORANDUM IN SUPPORT OF ITS MOTION TO COMPEL
MORE RESPONSIVE ANSWERS TO SECOND SET OF INTERROGATORIES**

Defendant Fortune Financial Services, Inc. (“Fortune Financial”) hereby replies to the Objection of Plaintiff Western Reserve Life Assurance Co. of Ohio (“WRL”) to Fortune Financial’s Motion to Compel More Responsive Answers to Second Set of Interrogatories.

1. In footnote 1, WRL claims that counsel for Fortune Financial made “general comments about his lack of understanding” regarding WRL’s claims, but allegedly never raised concerns about WRL’s discovery responses. Not so. Attorney Brenner had several direct conversations with Attorney Daly before the WRL’s discovery responses wherein he stated repeatedly that it was important for WRL to disclose its liability allegations and damages components with specificity, because this disclosure was critical for the upcoming settlement conference with Magistrate Judge Sullivan. After WRL filed the incomplete discovery responses, Attorney Brenner again spoke with Attorney Daly stating surprise and disappointment that WRL’s discovery responses were not complete. To argue that counsel doesn’t “understand” WRL’s discovery responses is demeaning and untrue. More aptly, it is WRL that doesn’t understand its obligations to provide meaningful and complete discovery.

2. WRL's answer to Interrogatory No. 6 remains incomplete, even with the revised spreadsheet that WRL provided. This interrogatory seeks, *inter alia*, an "identification [of] all documents evidencing those alleged damages, and ... all computations made to determine those damages." WRL's responses falls far short of providing this information, including failing to provide an itemization of documents and calculations related to market value, one of the key components of WRL's damages equation. Again, WRL's continued failure to explain how it calculates its alleged damages has thwarted the Court's and Defendants' ability to analyze and test WRL's damages claim.

3. WRL's objections regarding Interrogatory No. 7 fails to address the central piece of information lacking from its answer – an itemization of its legal costs and fees associated with this case, which it seeks as a component of damages in this case. WRL cannot simply total its attorneys' fees and divide by the 14 annuitants at issue in all lawsuits, including lawsuits in which Fortune Financial is not a party. Also, WRL's allocation of attorneys' fees incurred in the civil cases versus the criminal case must be disclosed so the allocation can be analyzed.

4. WRL's objection with respect to Interrogatory No. 12 fails to address the issue raised by the Motion to Compel. Specifically, WRL's initial response identified certain documents containing communications with Harrison Condit (including taped conversations that Fortune Financial has not received), and also responded that "[t]o the extent this interrogatory seeks information concerning other internal communications relating to Harrison Condit, such information is subject to attorney client privilege and/or the work product doctrine." Yet, WRL has not produced a privilege log to date.

5. WRL's objection regarding Interrogatory No. 16 dodges providing a firm answer. Interrogatory No. 16 seeks information regarding "Western Reserve's process, policies, procedures and/or practices for review and approval of annuity applications." With respect to review of annuity applications, WRL's answer was that "Western Reserve relies on its broker-dealers and agents to vet applications" This response does not answer whether WRL has any policies regarding the internal review of annuity applications – either it does or it does not. If it

does, the policies should be identified. If it does not, WRL must simply say so under oath. Moreover, WRL's response fails to answer the question of its policies regarding approvals of annuity applications.

6. WRL's objection to the Motion to Compel regarding Interrogatory No. 23 fails to align with the objection it initially interposed in its responses to interrogatories. WRL's initial objection was that inquiry regarding chargebacks was irrelevant. Changing its story, it now claims that it does not have to provide information regarding why it did not affect a chargeback because that issue relates to an unpled affirmative defense (Fortune Financial has not filed an answer because its 12(b)(6) motion is still pending). At bottom, Fortune Financial has a right per Rule 26 to explore through discovery why WRL did not affect contractually available chargebacks with respect to the subject annuities.

Defendant,
FORTUNE FINANCIAL SERVICES, INC.,
By their Attorneys,

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Dated: October 11, 2013

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of October, 2013, an exact copy of the within document was electronically filed with the Electronic Case Filing system of the United States District Court for the District of Rhode Island. Notice of this filing will be sent via e-mail to all parties able to accept electronic filings as indicated on the Notice of Electronic Filing.

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