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

TRANSAMERICA LIFE INSURANCE COMPANY, Plaintiff,	:	
vs.	:	C.A. No. 09-471 S
JOSEPH CARAMADRE, RAYMOUR RADHAKRISHNAN, ESTATE PLANNING RESOURCES, INC., ESTELLA 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.	:	

JOINT MOTION OF JOSEPH CARAMADRE, RAYMOUR RADHAKRISHNAN, EDWARD HANRAHAN, AND EDWARD L. MAGGIACOMO, JR. FOR PROTECTIVE ORDER [WITH INCORPORATED AUTHORITIES]

Now come Joseph Caramadre ("Mr. Caramadre"), Raymour Radhakrishnan ("Mr. Radhakrishnan"), Edward Hanrahan ("Mr. Hanrahan"), and Edward L. Maggiacomo, Jr. ("Mr. Maggiacomo") ("Defendants"), and hereby jointly respectfully move this Honorable Court for a protective order prohibiting the disclosure by Transamerica Life Insurance Company and

Western Reserve Life Insurance Company (together the "Insurance Companies") of the transcripts, along with their attached exhibits, of the depositions of certain witnesses (collectively the "Deposition Transcripts") in response to a subpoena served upon the Insurance Companies by the Securities and Exchange Commission ("SEC").

In support hereof, the Defendants submit the following:

On April 9, 2010, counsel for each defendant received notification from counsel for the Insurance Companies that the SEC had served the Insurance Companies with a subpoena for the Deposition Transcripts in connection with an investigation captioned *In re Estate Planning Resources.*[1] See Exhibit 1.[2] The notification letter calls upon any counsel having an objection to the Insurance Companies' compliance with the subpoena to file an appropriate Motion for Protective Order prior to April 16, 2010, the anticipated date of compliance with the subpoena.

The Defendants object to the Insurance Companies' production of the Deposition Transcripts for the following reasons:

1. The depositions were allowed by the Court and taken pursuant to an order issued under Rule 15 of the Federal Rules of Criminal Procedure. These proceedings were and have remained sealed.[3] As the Court determined when it entered the Order, the depositions were to be allowed for the sole purpose of preserving for an eventual trial, testimony that might otherwise

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[1]The SEC has issued subpoenas in the same captioned matter to Estate Planning Resources, Inc. ("EPR") and to Mr. Caramadre for documents, and to Mr. Maggiacomo, Mr. Hanrahan and Mr. Radhakrishnan for both documents and testimony. The subpoena to EPR for documents is not at issue in this motion.

[2]Exhibit 1 is a letter dated April 8, 2010 from David Barry, co-counsel for the Insurance Companies, to all counsel involved in the two above-captioned civil cases pending before the Court, specifically Transamerica Life Insurance Company v. Garvey et al., C.A. No. 09-471-S, and Western Reserve Life Assurance Company v. Buckman, et al., C.A. No. 09-472-S, and to counsel representing certain of the individuals in the criminal investigation. The correspondence indicates that it was copied to the Court as well.

[3]Recently, this Court redacted its *Opinion and Order* to permit it to be published. The proceedings, however, continue to be sealed.

be lost because of the physical condition of the deponents.[4] The transcripts of those depositions therefore may not be used unless and until a criminal indictment is returned or an information filed, and the case proceeds to trial, and the witnesses continue to be unavailable.[5] While the deposition transcripts may exist as a matter of fact, as a matter of law they are unavailable. They do not become available, legally, unless and until there is a criminal trial and the deponents (by reason of death or otherwise) cannot be called as witnesses.[6] Therefore, the transcripts are not subject to forcible process from the SEC or anyone else.[7]

2. To the extent that the Insurance Companies participated in the depositions, and that the transcripts are in any way part of the two civil cases referenced above, that participation occurred only as a result of a sealed order issued by Magistrate Judge Martin allowing the Insurance Companies to participate in the Criminal Rule 15 depositions, which, according to the *Order*, the government would schedule.[8] No repetitive questioning was allowed, *id.*, necessarily merging the criminal portion of each deponent's evidence with the civil.

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[4]See, Opinion and Order Redacted For Publication, *In Re Grand Jury Proceedings*, Misc. No. 09-84-S, United States District Court for the District of Rhode Island (Smith, J.)

[5]Even in cases that do not involve the extraordinary circumstance of pre-indictment depositions, Rule 15 depositions have limited permissible uses. Specifically, they may be used as substantive evidence at trial "only if the witness is then unavailable." 23 Am. Jur. 2d *Depositions and Discovery* § 237 (emphasis added); see, e.g., *United States v. Martinez-Perez*, 916 F.2d 1020, 1023 (5th Cir. 1990). This further supports the conclusion that the Court should not allow the disclosure of the Rule 15 depositions, taken for the limited and conditional purpose of preserving trial testimony, to the SEC. As it happens, both Mr. Garvey, the deponent in 09-471, and Mr. Buckman, the deponent in 09-472, are still alive.

[6]In making these arguments here, the Defendants do not waive any argument made earlier or in the future that the depositions would not be admissible in any criminal or civil trial.

[7]The First Circuit has recognized that there are certain situations in which a protective order will blunt even a grand jury subpoena. See, *In Re Grand Jury Subpoena*, 138 F.3d 442, 444-45 (1st Cir.), *cert. denied, sub nom. Doakes v. United States*, 524 U.S. 939 (1998). This Court has, in effect, adopted that view in its Rule 15 Order.

[8]*Order (Under Seal) Granting Plaintiffs' Motions to Conduct Expedited Discovery.* (See footnote 9, below).

In short, the civil aspect of these depositions remains completely derivative of their Rule 15 origins.[9] In its initial order, this Court made clear that dissemination of the depositions would be carefully restricted. It directed that any use of the depositions in the grand jury would subject government counsel to the court's disciplinary authority.[10] Plainly, no other use was ever contemplated. In line with this determination, the Scheduling Order entered by this Court in all the pending civil cases stayed all discovery, with the exception of only the coordinated Criminal Rule 15 depositions, until such time as the Court ruled on the pending Motions to Dismiss the civil cases. *Order of December 21, 2009.*[11] And, it has always been clear at the joint conferences the Court has conducted with counsel in both the civil and criminal proceedings that the Court's allowance of the depositions, whether pursuant to an Order of this Court or of Magistrate Judge Martin, has been solely for preservation of trial testimony in the face of the potentially imminent death of the deponents, and that it was never the Court's intention to allow open dissemination of the depositions.[12]

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[9]Although the Insurance Companies cast their request to participate in the depositions as seeking "expedited discovery", and despite their lack of citation to F.R.Civ.P. 27, their arguments made to Magistrate Judge Martin in support of that request were based on the likelihood that the witnesses would not be alive at the time of trial and that they were seeking to create a record of testimony that would be available for use at trial. (See Motion For Expedited Discovery filed 10/02/09 in C.A. No. 09-471 [Document #4], attached as Exhibit 2). Allowing the Insurance Companies to participate in the depositions was for the same purpose as allowing the government to take them in the first place, i.e., only to preserve testimony for trial. See footnote 12, below. In any event, because of the procedural format under which the depositions were conducted, it is impossible to separate the "civil" depositions from the "criminal" depositions in any material way.

[10]See, Opinion and Order Redacted For Publication, *In Re Grand Jury Proceedings*, Misc. No. 09-84-S, United States District Court for the District of Rhode Island (Smith, J.), at p. 30, ¶6. The government at all times expressly agreed and represented to counsel and to the Court that the depositions were solely and exclusively for the purpose of preserving trial testimony and that they would not be used for discovery purposes or produced to the grand jury.

[11]A copy of the Scheduling Order is attached as Exhibit 3.

[12]Paragraph 5 of the Scheduling Order allows the depositions to proceed pursuant to Magistrate Judge Martin's Order of October 27, 2009, which was entered as an accommodation to the Insurance Companies subject to the government's ability to take the depositions. Given the Court's entry of the Scheduling Order, suffice it to say that had the deponents not been terminally ill such that the government sought Rule 15 relief, the Court would not have allowed any discovery to occur pending determination of the motions to dismiss.

3. In addition to the reasons outlined above, allowing the deposition transcripts to be produced to the SEC would also create the opportunity for the information in those transcripts to find its way to the grand jury through cooperative efforts between the SEC and the United States Attorney's Office or other federal or state investigative agencies.[13] This could contaminate the grand jury proceedings, see *Kastigar v. United States*, 406 U.S. 441 (1972), and could require the burden of an evidentiary hearing as was necessitated in *In re Perlin*, 589 F.2d 260 (7th Cir. 1978).

4. Last but not least, the exhibits used by the government in the course of the depositions were obtained by the government pursuant to grand jury subpoenas and constitute Rule 6(e) material. They came into possession of the Insurance Companies only by virtue of the Court's allowing them to participate in the government's depositions. These materials, and the testimony predicated upon them, must remain confidential and may not be produced to a third party.

WHEREFORE, for the foregoing reasons and such others as may be advanced at hearing, the Defendants respectfully move for Protective Orders as requested hereinabove.

The Defendants request an expedited hearing on the within Motion, and further request that the Court issue an interim Protective Order preventing the Insurance Companies from producing the deposition transcripts until the Motion can be heard by the Court.

[13]In addition to the SEC subpoenas, the Financial Industry Regulatory Authority ("FINRA") (formerly NASD) has issued requests for testimony and document production to Mr. Hanrahan and Mr. Maggiacamo as licensed brokers subject to its enforcement authority. Mr. Caramadre and Estate Planning Resources, Inc. have received similar document requests from the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth.

Respectfully submitted,

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CERTIFICATION OF SERVICE

I hereby certify that I have served a copy of the within pleading upon all counsel of record via the ECF system, and have served via email and facsimile a copy upon John J. Kaleba, Senior Enforcement Counsel, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, Boston, Massachusetts 02110, to KalebaJ@SEC.GOV and 617-573-4593.

/s/ Anthony M. Traini
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