UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

WESTERN RESERVE LIFE ASSURANCE CO. OF OHIO, Plaintiff, vs. CONREAL LLC, HARRISON CONDIT, FORTUNE FINANCIAL SERVICES, INC., and ANTHONY PITOCCO, Defendants;	C.A. No. 09-470-WS
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-WS
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-WS

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-WS
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-WS
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-WS

WESTERN RESERVE LIFE ASSURANCE COMPANY 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-WS

CONSOLIDATED REPLY MEMORANDUM IN FURTHER SUPPORT OF DEFENDANTS JOSEPH A. CARAMADRE, EDWARD HANRAHAN, RAYMOUR RADHAKRISHNAN, EDWARD MAGGIACOMO, JR., AND HARRISON CONDIT'S MOTION TO STAY

This is not just "any large scale fraud case involving parallel proceedings." *Consolidated Mem. of Law in Support of Pls.' Objection* (hereinafter "Objection Memo"), at 11. Not only are the Movants[1] actively participating in pre-indictment criminal depositions as part of the parallel grand jury investigation, but they are also responding on all fronts to testimonial and documentary subpoenas from the Securities & Exchange Commission (the "SEC") and several other state and regulatory agencies. The Plaintiffs[2] have not brought one, but seven overlapping lawsuits (the "civil cases"), and their allegations raise a controversial issue about whether an attorney and his associates can be liable for fraud because of the alleged non-disclosures of his

[1] The term "Movants" refers to Defendants Joseph A. Caramadre ("Mr. Caramadre"), Edward Hanrahan ("Mr. Hanrahan"), Raymour Radhakrishnan ("Mr. Radhakrishnan"), Edward Maggiacomo, Jr. ("Mr. Maggiacomo"), and Harrison Condit ("Mr. Condit"). The term "Targets" refers to Mr. Caramadre, Mr. Hanrahan, Mr. Radhakrishnan, and Mr. Maggiacomo. The Movants file this identical Consolidated Memorandum in all seven lawsuits captioned above.

[2] The term "Plaintiffs" refers to Plaintiffs Western Reserve Life Assurance Company of Ohio ("WRL") and Transamerica Life Insurance Company ("Transamerica") (both part of the same Aegon Insurance Group. WRL and Transamerica are collectively referred to herein as the "Aegon Companies").

clients on annuity applications. The proceedings against the Movants have been broad in scope, multiple in nature, and financially devastating to Defendants in their combined effects. Already, they have thoroughly disrupted and overturned the professional lives of the Movants, their businesses, and their employees. To allow the Plaintiffs to capitalize on these circumstances by overwhelming the Movants with further litigation would be seriously burdensome and extremely prejudicial. The Plaintiffs' monetary interests in proceeding expeditiously with their lawsuits do not counterbalance the more fundamental interest that the civil and criminal proceedings proceed on a fair footing, increasing the likelihood of a just outcome for all parties involved.

ARGUMENT

I. THE EXTRAORDINARY CIRCUMSTANCES OF THESE PROCEEDINGS MORE THAN JUSTIFY A STAY.

"'While unquestionably a civil plaintiff has a right to an expeditious resolution of [its] claims, that right may be trumped by instituting a stay to allow a criminal investigation to proceed.'" *Eastwood v. United States*, Case No. 2:06-cv-164, 2008 U.S. Dist. LEXIS 106777, at *4 (E.D. Tenn. Nov. 14, 2008) (quoting *Ashworth v. Albers Med., Inc.*, 229 F.R.D. 527, 531 (S.D. W. Va. 2005)). The Plaintiffs emphasize that the Constitution does not "require" a stay, and that defendants have no "absolute right" to obtain one, but the fact is that, on balance, the circumstances here warrant a stay. *Objection Memo* at 7.

A. Avoiding the Prejudices that Would Result to the Movants from Denying a Stay is More Important than the Plaintiffs' Interests in Proceeding Expeditiously with their Lawsuits.

The amount of litigation that the Movants have faced over the past year has been staggering, and permitting these cases to continue concurrently with the ongoing parallel grand jury investigation and the numerous overlapping government investigations would force the

Movants to defend themselves with one hand tied behind their backs.[3] Denying a stay would not only threaten the Targets' Fifth Amendment rights against self-incrimination, but it would also jeopardize the Movants' due process rights to a fair civil proceeding. *C.f. Wehling v. Columbia Broad. Sys.*, 608 F.2d 1084, 1087-88 (5th Cir. 1979) (noting that plaintiff had, "in addition to his Fifth Amendment right to silence, a due process right to a judicial determination of his civil action.").[4] The complications and expenses that come with having to juggle so many interrelated proceedings would necessarily and significantly handicap the Movants' ability to defend themselves. As the court concluded in *Clark v. United States*, 481 F. Supp. 1086, 1100 (S.D.N.Y. 1979), in granting a stay under similar circumstances:

> It is reasonable to assume that a denial of the stays would severely strain defendants' resources both financial and otherwise and would unnecessarily complicate the proceedings here by creating the likelihood that the defendants might invoke the Fifth Amendment privilege.

Moreover, "even if the [Targets'] dilemma does not violate the fifth amendment or due process, it certainly undercuts the protections of those provisions, and [the] Court can exercise its

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[3] The Plaintiffs inappropriately represent that the Movants' position is somehow a "self-created burden." *Objection Memo* at 8. No court, criminal or civil has made such a finding, and the rule that Plaintiffs advance is circular. As they would have it, if a plaintiff or a criminal prosecutor makes allegations of wrongdoing against a defendant, then the defendant is responsible for those allegations, so the defendant's burdens should not count. Because, however, plaintiffs and prosecutors, by definition, always make such allegations, the Plaintiffs' rule would prevent defendants from ever establishing that their burdens deserve consideration. This would prevent courts from ever granting a stay, even when one is called for under "the interests of justice." *Microfinancial, Inc. v. Premier Holidays Int'l, Inc.*, 385 F.3d 72, 78 (1st Cir. 2004).

[4] The Plaintiffs' citation of *Serafino v. Hasbro, Inc.*, 82 F.3d 515 (1st Cir. 1996), for the proposition that "the risk of an adverse inference does not qualify as a hardship faced by a defendant" is inaccurate and misleading. *Objection Memo* at 13. In *Serafino*, the First Circuit never held or stated that the risk of an adverse inference does not qualify as a hardship. The court affirmed the dismissal of a lawsuit because the plaintiff's invocation of his Fifth Amendment privilege during his deposition undermined the defendant's defense and left the defendant with no other means by which to obtain the information that it required. *Serafino*, 82 F.3d at 519. The plaintiff did not move for a stay, and the court refused to impose one *sua sponte*. *Id.* In the cases at bar, the Movants have requested a stay. Moreover, a postponement of the civil cases until the Targets are no longer under the cloud of criminal prosecution could actually improve the Plaintiffs' ability to obtain information that the Targets might otherwise claim as privileged.

discretion to enable [the Targets] to avoid this unpalatable choice . . . ." *Brock v. Tolkow*, 109 F.R.D. 116, 120-121 (E.D.N.Y. 1985) (emphasis added).

Closely related to these last points, the Court should also look ahead to what might occur under either scenario of requested relief. If the stay is granted, essentially nothing adverse happens to anyone. The status quo is maintained, all parties' rights are preserved, and if there is a need for testimony imminently in danger of being lost, it can be secured. The only minimal disadvantage to the plaintiffs is that they are temporarily precluded from attempting to secure a judgment (which is not a foregone conclusion) against the Targets, and the consequent commencement of appellate proceedings. If, on the other hand, the stay is denied, the Draconian consequences to the Targets are as described above.

More importantly, however, if the cases proceed the Court may be forced to decide if it will allow the drawing of adverse inferences from the invocation of testimonial privileges, whether the cases can be fully and fairly litigated at all without the Targets' testimony and instead on the basis of those inferences, and whether under the circumstances of the Targets' severe legal and financial debilitation, the cases can or should proceed to trial at all.[5] In other words, if the Court is not inclined to resolve the adverse inference issue and/or somehow allow the cases to proceed through trial, there is nothing to be gained by denying the stay: if there are presently identifiable and serious obstacles to the cases being fairly litigated even if the stay is denied, then it seems illogical to do anything other than stay the actions now.

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[5]For example, if no stay is granted, the Targets will be subject to discovery requests that will cause them to invoke their testimonial privileges, raising the adverse inference question for determination. Given the issues in the case, and as is clear from what the Court has already seen in the motions to dismiss, it would be grossly unfair to allow the cases to be tried or otherwise decided on the basis of adverse inferences drawn against the Targets. But even if the "partial stay" remedy is employed—i.e., a remedy whereby the Targets are not required to be subject to discovery, and therefore presumably not required to invoke their privileges, thus sidestepping for the moment the adverse inference issue—nothing substantive can be accomplished in the proceedings. If the only discovery is that taken from third parties or others, and the Targets have neither provided nor been allowed to take discovery themselves, there will clearly be no basis on which the cases can proceed to trial. While granting a limited stay (as to only the Targets themselves) allows some discovery to proceed, it does not get the cases any closer to trial.

By any measure, denying a stay will likely complicate these proceedings significantly, while imposing burdens and risks on the Targets that greatly outweigh any disadvantage to the Plaintiffs if the Court instead decides to grant a stay.

Also important, the Plaintiffs place far too much emphasis on the fact that "no indictments have been issued in connection with the criminal investigation." *Objection Memo* at 12. "The fact that an indictment has not yet been returned--while it may be a factor counseling against a stay of civil proceedings --does not make consideration of the stay motion any less appropriate." *Brock*, 109 F.R.D. at 120 n. 2; *see Chao v. Fleming*, 498 F. Supp. 2d 1034, 1038 (W.D. Mich. 2007) ("[A] stay should not be categorically denied solely because the defendant has not yet been indicted.").[6] Rather than presenting only a minimal distraction to the Movants, the numerous investigations, including the grand jury criminal investigation, have been wide-ranging and lengthy, and they have required the Movants' active participation and cooperation. *Compare Sterling Nat'l Bank v. A-1 Hotels Int'l, Inc.*, 175 F. Supp. 2d 573, 578 (S.D.N.Y. 2001) ("There is no indication whatever that the grand jury's investigation has reached a critical stage; only one document subpoena . . . and some investigative inquiries by an FBI agent, have been called to the Court's attention . . . .") *with Walsh Sec., Inc. v. Cristo Prop. Mgmt.*, 7 F. Supp. 2d 523, 527 (D.N.J. 1998) (grand jury investigation presented a "strong case" for a stay because several of the defendants had been subpoenaed, and the government had informed the defendants that they were targets of the criminal investigation.). The Targets have had to defend Rule 15

[6] Neither does it matter that the Government is not "in control of both the civil and criminal proceedings." *Objection Memo* at 14. "A decision to stay civil discovery does not require a finding of bad faith on the part of the authorities bringing either the civil or criminal case." *Brock*, 109 F.R.D. at 120 n. 3. These cases have been intertwined with the grand jury investigation from the outset, and it certainly would not be to the Plaintiffs' disadvantage to share discovery with the Government that the Government might not be able to obtain otherwise. And given the identical subject matter of these civil cases and the grand jury investigation, there is no doubt that the Government would benefit from observing how the Targets respond to the Plaintiffs' allegations. Significantly, "[t]he similarity of the issues underlying the civil and criminal actions is considered the most important threshold issue in determining whether or not to grant a stay." *Eastwood*, 2008 U.S. Dist. LEXIS 106777, at *4-*5.

depositions, which are highly rare in a pre-indictment scenario, and all the Movants have had to respond to extensive documentary and testimonial subpoenas from entities such as the SEC, the Financial Industry Regulatory Authority, and the Massachusetts Secretary of State's Securities Division. These overlapping and extensive obligations have all been in addition to the already heavy burdens of having to respond to these seven civil cases, which present a rare and complex theory of fraud that is hardly clear-cut.

On the other hand, the Plaintiffs' interests in avoiding a stay are nothing unique. They oppose a stay because it would require them to wait longer to seek recovery of their alleged losses, not because a postponement would cause them some severe hardship.[7] *Cf. Austin v. Unarco Indus., Inc.* 705 F.2d 1, 5 (1st Cir. 1983) (case cited by Plaintiffs, *Objection Memo* at 9, in which an iron worker's widow opposed a bankruptcy stay that would have delayed her suit against an asbestos company that supplied her husband's former employer.).

Moreover, contrary to the portrait advanced by the Aegon Companies, "[d]elays in civil cases are fairly common." *Walsh*, 7 F. Supp. 2d at 528. A stay would not provide the Movants with any unfair advantage, and the Plaintiffs would be free to resume their claims as soon as the Court determines that to do so would no longer be prejudicial. *Compare Citibank, N.A. v. Hakim*, 92 Civ. 6233, 1993 U.S. Dist. LEXIS 16299, at *5-*6 (stay would have "delay[ed] indefinitely, and possibly derail[ed], plaintiff's action[,]" because co-defendants fled the country with assets and certain evidence.). Speculation about stale memories or the unavailability of certain witnesses "is simply insufficient to overcome the real probability of substantial prejudice" that would result from forcing the Movants to litigate these cases simultaneously with

[7] Ironically, the Plaintiffs, who are large corporations with abundant resources, argue that their financial motivations for opposing a stay are "significant" while belittling the overwhelming financial burdens that would befall the individual Movants should these cases proceed. *See Objection Memo* at 9-10, 11 n. 5.

the numerous governmental and agency investigations, criminal and civil, that are ongoing and active. *Volmar Distribs., Inc. v. New York Post Co.*, 152 F.R.D. 36, 40 (S.D.N.Y. 1993) (pointing out that "due to the overlapping issues" in related criminal and civil cases, "the criminal justice system will help safeguard evidence"). Furthermore, if the Court were to allow a stay, the Plaintiffs will also be able to seek interest as part of any ultimate judgment. *See Walsh*, 7 F. Supp. 2d at 528 ("Walsh's financial losses are undoubtedly continuing, as with any plaintiff during the pendency of a lawsuit."); *see also Eastwood*, 2008 U.S. Dist. LEXIS 106777, at *14 ("[T]he Court finds that these statutory remedies mitigate the potential prejudice Plaintiff may face if the stay is extended.").[8]

B. A Stay Would Serve the Interests of the Court, the Public, and the Annuitants.

The Plaintiffs discount the benefits that a stay would provide to others. They point to the alleged "conveniences" that would flow to this Court from allowing their seven civil cases to continue spiraling in and out of the Court in tandem with the parallel investigations, but the inconvenience of doing so is patent. *See Objection Memo* at 17. "Not only would [denying a stay] burden the . . . Court with deciding a constant stream of [Fifth Amendment] privilege issues, but if some defendants were forced to assert the privilege while others were not, it would be difficult or impossible to fairly apportion liability because of the differing factual record among defendants." *Walsh*, 7 F. Supp. 2d at 528-29. On the other hand, allowing the criminal

[8] Unlike in several of the cases that Plaintiffs have cited in opposition, no one has accused the Movants of fraudulently transferring their assets in an attempt to avoid an inevitable judgment. *See, e.g., State Farm Mut. Auto. Ins. Co. v. Beckham-Easley*, C.A. No. 01-5530, 2002 U.S. Dist. LEXIS 17896, at *8 (E.D. Pa. Sept. 18, 2002) ("Here, the Plaintiffs assert that 'defendants have sold real estate since the pendency of this action, have liquidated other assets, have transferred assets outside the country and have placed assets in the names of other individuals and/or entities' in anticipation of a verdict against them."); *Sterling*, 175 F. Supp. 2d at 579 n. 5 ("Plaintiff contends that the document discovery to date has revealed massive transfers of funds, more than one million dollars in four months . . . ." (internal quotation omitted)).

investigation to continue unimpeded "may ultimately reduce or eliminate the need for discovery or result in a settlement." *Chao*, 498 F. Supp. 2d at 1040.

As argued in the Movants' initial papers, the public's interest in allowing the criminal proceedings to advance, even if to a decision that no indictment is warranted, also weighs in favor of a stay. Relatedly, "there is no tangible harm to the public from these alleged frauds that could not be remedied by the criminal investigation." *Walsh*, 7 F. Supp. 2d at 529. The Movants are no longer involved with any of the questionable transactions, and even if the Plaintiffs' allegations were true, it is not clear that they would amount to fraud. *Compare Sterling*, 175 F. Supp. 2d at 580 ("the conduct alleged in this case is unquestionably the sort of criminal conduct for which RICO is appropriately invoked."). Thus, staying these proceedings in deference to the criminal investigation and potential prosecution may further illuminate the principles of law that would apply here. Once the criminal matter has concluded, therefore, the Plaintiffs may be in a better position to reassess the potential merit of their claims and whether, and to what extent, they warrant the investment of the Plaintiffs' resources. In addition, the federal and state authorities are already acting with more than sufficient vigor to vindicate any relevant public interest; the civil actions, aimed at shoring up Plaintiffs' alleged financial interests, are not needed to protect the public interest and do not promote it.

Furthermore, denying a stay would undoubtedly burden several of the annuitants and their families. The Court should disregard Plaintiffs' plainly hollow representation that "they do not anticipate the need to conduct further discovery of the terminally ill annuitants outside of participating in any future deposition of annuitant Jason Veveiros." *Objection Memo* at 15. In the accompanying footnotes, the Plaintiffs immediately gut this equivocal prediction, reserving the right to burden families of the annuitants "both living and dead," and confess that it is

"desirable for many reasons" that the living annuitants "be available to provide supplemental discovery and testimony, if and as necessary." *Id.* at 15 n. 7 and 16 n. 8. The Plaintiffs have already preserved three annuitants' testimony through attending Rule 15 depositions, and further civil discovery should wait until the criminal matter concludes.

In the event that emergency circumstances develop sufficient to justify lifting the stay on civil discovery for limited purposes (for example, in order to allow the Plaintiffs to collect the testimony of witnesses who face imminent death) the Court would, of course, have discretion to do so. The discretionary flexibility that a stay of discovery would afford to this Court further warrants granting the requested stay at this juncture.

II. A LIMITED STAY WOULD NOT PROVIDE THE RELIEF THAT JUSTICE REQUIRES.

The Plaintiffs' alternative proposal of a temporary, limited stay would not protect the Targets from the substantial burdens of intensive document discovery, defending depositions of related witnesses, and negotiating the twists and turns of the interrelated civil and criminal cases, putting them to a tactical and strategic disadvantage that is inconsistent with the conduct of just proceedings. *See Wehling*, 608 F.2d at 1088 (holding that a defendant's right to discovery did not override the plaintiff's right to a fair lawsuit.). Instead, the Court should stay civil discovery entirely to allow the Targets "to defend the [parallel] civil case[s] vigorously without fear of subsequent prosecution." *Brock*, 109 F.R.D. at 120. The Movants' concerns stem not only from the multiple burdens that responding to testimonial discovery would impose upon the Targets' rights against self-incrimination, but also the prejudicial effects that defending parallel proceedings will have upon their ability to efficiently handle most other aspects of these seven related civil cases. A limited stay would not prevent the Plaintiffs from inundating the Movants with duplicative and expensive requests for document production, and it would still implicate the

Targets' rights against self-incrimination. Already, as a part of the SEC's investigation, the Targets have had to weigh whether the Fifth Amendment privilege applies to the production of certain documents. *See Opinion & Order, Sec. & Exch. Comm'n. v. Caramadre*, M.C. No. 10-52S (D.R.I. June 10, 2010) *available at* http://www.rid.uscourts.gov/menu/judges/opinions/smith/06102010_1-10MC0052S_SECURITIES_AND_EXCHANGE_COMMISSION_V_CARAMADRE_P.pdf, at 12-13 (holding that the Targets must consider whether the act of production doctrine applies to each document subpoenaed by the SEC). Allowing only a limited stay would compound these burdens because the Plaintiffs would undoubtedly seek the production of many of the same materials. Only a general stay can adequately satisfy these and the other concerns that the Targets raised in their initial memorandum.

CONCLUSION

For these reasons and those set forth in the Movants' previous memorandum in support of their motion to stay, the Movants respectfully ask this Court to stay these civil actions until the completion of the grand jury investigation and the resolution of any criminal proceedings emerging therefrom.

Respectfully submitted,

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Dated: July 22, 2010

CERTIFICATION

I hereby certify that on July 22, 2010, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF system.

/s/ Robert G. Flanders, Jr.