

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

TRANSAMERICA LIFE INSURANCE	)	
COMPANY,	)	
Plaintiff,	)	
	)	
vs.	)	
	)	C.A. No.: 09-471/WS
JOSEPH CARAMADRE, RAYMOUR	)	
RADHAKRISHNAN, ESTATE PLANNING	)	
RESOURCES, INC., ESTELLA	)	
RODRIGUES, EDWARD MAGGIACOMO,	)	
JR., LIFEMARK SECURITIES CORP., and	)	
PATRICK GARVEY,	)	
Defendants;	)	

**TRANSAMERICA LIFE INSURANCE COMPANY’S OBJECTION TO  
DEFENDANT’S MOTION FOR ENTRY OF PARTIAL FINAL JUDGMENT**

Plaintiff Transamerica Life Insurance Company (“Transamerica”) objects to the motion for entry of partial judgment filed by Defendant Estella Rodrigues.

Transamerica files herewith a supporting memorandum of law and respectfully request hearing on this motion.

Respectfully submitted,

/s/ Brooks R. Magratten  
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 David E. Barry, Esq., *pro hac vice admitted*  
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Dated: August 6, 2010

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

WESTERN RESERVE LIFE ASSURANCE )  
CO. OHIO, )  
Plaintiff, )

vs. )

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

C.A. No.: 09-470/S

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/S

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/S

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/S

**CONSOLIDATED MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS  
WESTERN RESERVE LIFE ASSURANCE CO. OF OHIO AND  
TRANSAMERICA LIFE INSURANCE COMPANY’S OBJECTION TO  
DEFENDANTS’ MOTIONS FOR ENTRY OF PARTIAL FINAL JUDGMENT**

Plaintiffs Western Reserve Life Assurance Co. of Ohio (“Western Reserve”) and Transamerica Life Insurance Company (“Transamerica”) (together, “Plaintiffs”) submit this consolidated memorandum of law in response to motions for entry of partial judgment filed by Defendants Conreal LLC, Estella Rodrigues, ADM Associates, LLC and DK LLC (the “Annuity Owners”) in civil actions numbered 09-470, 471, 472 and 473.

Pursuant to Fed. R. Civ. P. 54(b), the Court may enter partial judgment if it has issued a final ruling that disposes of fewer than all claims asserted in a case and there is “no just reason” to delay the entry of partial judgment. *See also, Gonzalez Figueroa v. J.C. Penney Puerto Rico, Inc.*, 568 F.3d 313, 317 (1<sup>st</sup> Cir. 2009); *Spiegel v. Trustees of Tufts College*, 843 F.2d 38, 42 (1<sup>st</sup> Cir. 1988). Plaintiffs agree that the ruling dismissing the claims against the Annuity Owners is final.<sup>1</sup> Entry of partial judgment, as the

<sup>1</sup> In order to possess the requisite level of “finality” for purposes of Rule 54(b), the ruling must “dispose completely either of all claims against a given defendant or of some

Annuity Owners propose, however, should not lend support to the Target Defendants' request to stay all discovery indefinitely in these civil actions. Plaintiffs have opposed the Target Defendants' motion to stay for reasons set forth in their memoranda filed July 13, 2010.

As the Annuity Owners state, the requested judgments relate to two critical, but discrete issues of law: 1) whether an insurable interest requirement applies to variable annuities with guaranteed death benefits; and 2) whether an incontestability clause shields DK and ADM from liability for fraud. These legal questions raise no factual disputes. Regardless of the outcome of the appeal, the parties will not need to repeat discovery.<sup>2</sup>

Moreover, if the First Circuit reverses this Court's dismissal of claims against the Annuity Owners, the Annuity Owners would not be prejudiced by discovery while the appeal is pending. Annuity Owners' counsel represents central remaining defendants whose interests are aligned with the Annuity Owners' interests. This alignment of interests and common representation fully protects the Annuity Owners even if they are not directly participating in discovery pending the appeal. *See e.g.*, Fed. R. Evid. 804(b)(1) (permitting the introduction of former testimony as evidence against a

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discrete substantive claim or set of claims against the defendants generally." *Maldonado-Denis v. Castillo-Rodriguez*, 23 F.3d 576, 580 (1<sup>st</sup> Cir. 1994). Although plaintiffs intend to amend the complaint to assert additional claims against DK, Plaintiffs concede that the Court's ruling disposed of all claims that depend exclusively upon the insurable interest requirement and implicate the incontestability clauses of the Annuities.

<sup>2</sup> Defendants' failure to disclose the lack of an insurable interest is one of the bases for plaintiffs' fraud counts against the remaining defendants. To the extent any additional unknown facts conceivably related to this issue might be discovered while the appeal is pending, the Annuity Owners' interests are fully protected based on the composition of the remaining defendants.

defendant who was not present to cross-examine the witness if . . . “a predecessor in interest[] had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination”). Accordingly, no prejudice would inure to the Annuity Owners by permitting Plaintiffs to seek appellate review of the proposed partial judgment, while continuing to pursue discovery in connection with the remaining claims.<sup>3</sup>

### CONCLUSION

Subject to their right to seek discovery in these civil actions, Plaintiffs have no objection to the entry of partial judgment as requested by the Annuity Owners.

Respectfully submitted,

/s/ Brooks R. Magratten

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<sup>3</sup> Plaintiffs intend to move to amend the complaint in C.A. 09-473 to assert an additional claim against DK for fraud in the factum. *See* Opinion and Order, dated June 2, 2010 at p. 41, n.16 (acknowledging that Plaintiffs may seek leave to amend the complaints to assert claims for fraud in the factum). The addition of this claim against DK while an appeal is pending similarly should not result in a stay of discovery pending the appeal. The facts supporting a fraud in the factum claim are not intertwined with those involving the insurable interest or incontestability clause issues. To the extent that further discovery may reveal additional facts that provide additional bases for liability, the Annuity Owners are aware of this reality and are fully protected based on the alignment of interests and their sharing of counsel with remaining defendants. If the Court is to grant motions to enter partial judgment in these circumstances, the Annuity Owners should be barred from raising a *res judicata* defense to any causes of action that are not yet known or asserted based on the lack of discovery.

**CERTIFICATE OF SERVICE**

I certify that the within document was electronically filed with the clerk of the court on August 6, 2010, and that it is 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