

Order dated June 2, 2010, as well as for new and additional reasons stated herein and argued in Defendants' supporting memorandum filed together herewith. Defendants' grounds for dismissal of all counts pending against them in the *Second Amended Complaint* include but are not limited to the following:

(1) The Caramadre Defendants had no relationship, dealings, or communications whatsoever with Transamerica, nor did they have any duty to make any of the disclosures in question. Moreover, because the Caramadre Defendants had no business relationship whatsoever with Transamerica, they cannot possibly have committed fraud by failing to disclose alleged material facts to Transamerica.

(2) In any event, there is no duty of disclosure in an arms-length transaction of this sort involving an insurance company contract-of-adhesion. Moreover, Transamerica waived the right to bring any such claims because its annuity application did not even inquire about the matters Transamerica now claims the Defendants should have disclosed.

(4) The Court should dismiss Transamerica's newly articulated claims of fraud-in-factum, as well as its rescission and declaratory judgment claims dependent upon its fraud-in-factum allegations, for several reasons:

a. Transamerica fails to allege the elements of fraud-in-factum even with respect to the annuitant and utterly fails to allege the elements of fraud-in-factum as applied to itself – clearly Transamerica understood the terms of its own contract-of-adhesion, and the knowledge-level of the annuitant (who was not even a contracting party) regarding the contract had no bearing on the rights or obligations that Transamerica held under the annuity contract.

b. Transamerica fails to state its fraud-in-factum claims with sufficient particularity as required by Fed. R. Civ. P. 9(b).

c. The Incontestability Clause in the annuity contract bars Transamerica's claims in this regard, including but not limited to its rescission and declaratory judgment claims against Ms. Rodrigues, the owner of the annuity.

(5) Because Transamerica's fraud-based claims lack validity, the Court should dismiss Transamerica's unjust enrichment and civil conspiracy claims, which are derivative.

In further support of this motion, Defendants file together herewith a memorandum of law with accompanying exhibits.

Respectfully submitted,

DEFENDANTS JOSEPH CARAMADRE,
RAYMOUR RADHAKRISHNAN, ESTATE
PLANNING RESOURCES, INC., AND ESTELLA
RODRIGUES,

By their Attorneys,

/s/ Robert G. Flanders, Jr.

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CERTIFICATION

I hereby certify that on October 4, 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.*_____