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

WESTERN RESERVE LIFE ASSURANCE CO. OF OHIO, Plaintiff, vs. JOSEPH CARAMADRE, RAYMOUR RADHAKRISHNAN, ESTATE PLANNING RESOURCES, INC., HARRISON CONDIT, and FORTUNE FINANCIAL SERVICES, INC., 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
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-S
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-S

WESTERN RESERVE LIFE ASSURANCE CO. 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-S

OBJECTION TO THE MAGISTRATE JUDGE'S DENIAL OF PLAINTIFFS' OMNIBUS MOTION FOR PROTECTIVE ORDER STRIKING DEFENDANT ESTATE PLANNING RESOURCES, INC.'S INTERROGATORIES
AND
MOTION TO STAY THE MAGISTRATE JUDGE'S ORDER PENDING DETERMINATION OF THIS OBJECTION

Plaintiffs Transamerica Life Insurance Company ("Transamerica") and Western Reserve Life Assurance Co. of Ohio ("Western Reserve") (together "Plaintiffs"), pursuant to Fed R. Civ. P. 72, object to the Magistrate Judge's order dated January 14, 2011, denying their motions for protective orders striking interrogatories propounded by "target defendant" Joseph Caramadre's company, Estate Planning Resources, Inc. ("EPR") or, alternatively, to amend the Initial Case Management Order dated September 10, 2010 ("ICMO") to allow full discovery to be directed to EPR. Plaintiffs further request that the Magistrate Judge's Order requiring a response to the interrogatories within thirty days be stayed pending the outcome of this objection.

Plaintiffs file herewith a supporting memorandum of law and have ordered a transcript of the hearing before the Magistrate Judge, which will provided upon receipt.

Plaintiffs respectfully request hearing on this objection and that such hearing be consolidated with a hearing on Western Reserve's Motion for Protective Order Striking DK,

LLC's Interrogatories and Objection to DK LLC's Motion to Propound More Than Twenty Five Interrogatories, filed in C.A. No. 09-473/S on January 18, 2011. Plaintiffs estimate that such hearing will last thirty minutes.

Respectfully submitted,

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Dated: January 21, 2010

CERTIFICATE OF SERVICE

I certify that the within document was electronically filed with the clerk of the court on December 21, 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

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

WESTERN RESERVE LIFE ASSURANCE CO. OF OHIO, Plaintiff, vs. JOSEPH CARAMADRE, RAYMOUR RADHAKRISHNAN, ESTATE PLANNING RESOURCES, INC., HARRISON CONDIT, and FORTUNE FINANCIAL SERVICES, INC., Defendants;	C.A. No. 09-470-S
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MEMORANDUM IN SUPPORT OF PLAINTIFFS' OBJECTION TO THE MAGISTRATE JUDGE'S DENIAL OF PLAINTIFFS' OMNIBUS MOTION FOR PROTECTIVE ORDER STRIKING DEFENDANT ESTATE PLANNING RESOURCES, INC.'S INTERROGATORIES AND MOTION TO STAY THE MAGISTRATE JUDGE'S ORDER PENDING DETERMINATION OF THIS OBJECTION

Defendant Joseph Caramadre seeks to exploit a perceived loophole in this Court's Initial Case Management Order dated September 10, 2010 ("ICMO") by having his closely held company, Estate Planning Resources, Inc. ("EPR"), serve interrogatories that he is prohibited from propounding as a condition of his temporary reprieve from participating in full discovery as a result of his acknowledged status as a target of an ongoing federal criminal investigation. Plaintiffs, Transamerica Life Insurance Company ("Transamerica") and Western Reserve Life Assurance Co. of Ohio ("Western Reserve") (together "Plaintiffs"), moved pursuant to Fed. R. Civ. P. 26(c) for a protective order striking EPR's interrogatories served in all seven cases. *See* Exhibit A to Motions for Protective Order, filed December 4, 2010.[1] Alternatively, Plaintiffs sought to amend the ICMO to allow full discovery to be directed to EPR. The Magistrate Judge entered orders denying Plaintiffs' motions on January 14, 2011. Plaintiffs now object to the

[1] Near identical sets of interrogatories were served by EPR in each of the seven above-captioned actions.

Magistrate Judge's orders and request a stay of the order requiring a response to the interrogatories pending determination of this objection.

BACKGROUND

Although relatively little discovery has been conducted to date, the topic has been the subject of considerable attention in these seven related cases. Even before any parties propounded any formal written discovery, Mr. Caramadre and his colleagues, Edward Hanrahan, Raymour Radhakrishnan and Edward Maggiacomo (together "Targets"), filed motions to stay all discovery in these civil actions until completion of a parallel federal grand jury criminal investigation.[2] The Targets also lamented over the myriad investigations that several state and federal agencies had launched against them and Mr. Caramadre's company, EPR, concerning potential violations of federal securities laws, as well as other laws and regulations. *See* Consolidated Memorandum of Law in Support of [Targets'] Motion to Stay (hereafter "Stay Memo") at p.7.[3] The Targets complained that participation in discovery during the criminal and regulatory investigations would be "fundamentally unfair" and impose "onerous practical burdens" on them. *Id.* at 10-12. They also contended that forced participation in discovery would violate their Fifth Amendment rights against self incrimination. *Id.* at 13-15.

Plaintiffs responded to the Targets' motions by pointing out that their constitutional and other concerns did not necessitate or warrant a stay of discovery.[4] Nevertheless, Plaintiffs proposed that if the Court were inclined to impose some form of a stay, then a temporary stay that would delay "testimonial discovery" (i.e., depositions, interrogatories and requests for

[2] Motions were filed on June 16, 2010 in all cases. Defendant Harrison Condit joined the motion, but did not identify himself as a Target.
[3] The consolidated memorandum was filed in all cases on June 16, 2010.
[4] Plaintiffs filed their objections to the motions to stay on July 13, 2010.

admissions) might be appropriate in order to address the Targets' concerns regarding protection of their core Fifth Amendment rights.

Ultimately, the Court did not rule on the Targets' motions. Rather, the Court brokered a discovery agreement between the parties that would carry them through the end of 2010. A central tenet of the discussions and negotiations at the September 1, 2010 chambers conference was that any limitations on discovery be bilateral – that is, limitations on discovery were to be imposed evenly on all parties, so that the targets could not impose discovery obligations from which they themselves were immune. In the ICMO, the Court specified that the parties could propound requests for document production, but limited other discovery with respect to the Targets. *Id.* at ¶¶ 3 and 4. Specifically, the Court ordered that:

> no Target Defendant shall propound interrogatories or requests for admission, or notice any such deposition, nor shall any Target Defendant, whether on his own behalf or on behalf of an organization . . . be required to respond to any such interrogatories or requests for admission, nor be noticed or subpoenaed for any deposition, orally or in writing, until further order of the Court. . . .

Because the ICMO temporarily immunizes the Targets from providing testimony "on behalf of an organization," Plaintiffs are effectively precluded from seeking testimonial discovery from EPR, and EPR is effectively shielded from providing testimonial discovery, because Mr. Caramadre, as the President, Secretary, Treasurer, Director and controlling shareholder of EPR, would without doubt seek immediate shelter from such discovery directed to EPR under the above-cited provisions of the ICMO. It was specifically because of the intimate relationship between Caramadre and EPR (and other corporate defendants) that the Targets

required that the ICMO protect them from having to provide testimony "on behalf of an organization."[5]

After taking full advantage of Plaintiffs' good faith willingness and effort to find a middle ground that would accommodate the Targets' expressed concerns regarding the burdens on, and threat to, their Constitutional rights posed by any testimonial discovery, and after having induced Plaintiffs to agree to delay "testimonial discovery" of any Targets or organization on whose behalf a Target would normally be expected to testify (*e.g.*, Caramadre on behalf of his company, EPR) in return for the Targets' agreement to the same limitation, Caramadre had his company, EPR, propound interrogatories to Plaintiffs. *See* Exhibit A to Motions for Protective Order. Despite multiple requests that EPR withdraw the interrogatories based on the temporary discovery limitations set forth in the ICMO so as to maintain the fair and equitable balance sought to be accomplished by the parties' negotiation and the ICMO, EPR refused to do so. Accordingly, on December 2, 2010, Plaintiffs filed an omnibus motion for protective order or, alternatively, to amend the ICMO.

The Court referred Plaintiffs' motion to Magistrate Judge Martin, who heard argument on January 7, 2010. During the hearing, Magistrate Judge Martin acknowledged that a literal reading of the ICMO led to an irregular situation where EPR could obtain full discovery from Plaintiffs while, at the same time, avoid providing testimonial discovery because of Caramadre's relationship with the company. Nevertheless, he denied Plaintiffs' motion. Plaintiffs now appeal from that denial.

[5] Plaintiffs are highly confident that if they were to seek testimonial discovery of any kind from EPR, *e.g.*, by way of a Fed. R. Civ. P. 30(b)(6) deposition or interrogatories, such discovery efforts would be met by a swift invocation by EPR of the protections afforded the Targets by the ICMO and an assertion that Caramadre, as the principal and controlling owner of EPR, cannot be required to respond on behalf of EPR.

ARGUMENT

The District Judge entered the ICMO pursuant to his "formidable case-management" authority and "great latitude" under Fed. R. Civ. P. 16 to govern the pretrial aspects of these seven related cases. *Rosario-Diaz v. Gonzalez,* 140 F.3d 312, 315 (1st Cir. 1998). Given the size and complexity of this litigation, as well as the District Judge's personal familiarity with the many legal and practical issues raised herein, it is particularly important that he impose his "own view" of how the case should be managed. Wright and Miller, 6A Fed. Prac. and Proc. § 1530 (3d ed.) (discussing Rule 16 in the context of a "Big Case"). Consequently, given the active role that the District Judge has had in tailoring the ICMO and the overall management of these cases, in these unique cases, Plaintiffs respectfully submit that the Magistrate Judge's interpretation and application of, and amendments (or lack thereof) to, the ICMO should be reviewed *de novo*. This *de novo* standard of review is consistent with the Court's authority under Rule 16 to continually monitor and adjust the pretrial order to account for factual developments.

Even if any deference were afforded to the Magistrate Judge's discovery order in the unique circumstances of these cases, the District Judge must "modify or set aside any part of the order that is clearly erroneous or is contrary to law." Fed. R. Civ. P. 72(a). *See also* 28 U.S.C. § 636(b)(1)(A); *Sellers v. U.S. Dept. of Defense*, 2008 WL 360884, *1 (D.R.I. 2008). '"A determination is 'clearly erroneous' when, although there is evidence to support it, the court, after reviewing all the evidence, is left with the definite and firm conviction that the magistrate judge made a mistake."' *Consorzio Del Prosciutto Di San Daniele v. Daniele, Inc.*, 2010 WL 2196069, *4 (D.R.I. 2010). In the context of a discovery dispute involving a matter committed to the Court's discretion, reversal is appropriate if the magistrate judge abused his discretion.

See, e.g., Doe v. Marsh, 899 F. Supp. 933, 934 (N.D.N.Y. 1995) (citing *Conway v. Icahn*, 16 F.3d 504, 510 (2d Cir.1994)).

The Magistrate Judge abused his discretion by permitting EPR to exploit a perceived loophole in the ICMO. Despite explicitly recognizing the apparent inequity of EPR's discovery efforts, the Magistrate Judge understandably was reluctant to interfere with a discovery order that the assigned District Court Judge helped craft. However, his decision to permit EPR to propound interrogatories provides EPR with an unfair tactical advantage and is contrary to the spirit and intent of the ICMO. It was an abuse of discretion for the Magistrate Judge not to exercise his authority to control the exchange of discovery and issue a protective order striking EPR's interrogatories. *See* Fed. R. Civ. P. 26(c) (permitting the Court to control the exchange of discovery by, among other things, issuing protective orders "forbidding the disclosure or discovery" or "specifying terms, including time and place, for the disclosure or discovery"). Respectfully, this Court should rectify that error by granting the protective order and, pursuant to Fed. R. Civ. P. 16(c)(2)(F), amending the ICMO to close the loophole that Caramadre and EPR now seek to exploit.

EPR is acting in bad faith by propounding interrogatories at this time. The existing limitations on discovery are the product of Plaintiffs' cooperation and willingness to allow Mr. Caramadre (and the other Targets) to delay unbounded discovery. Mr. Caramadre's and the other Targets' motion for a complete stay of discovery had minimal legal merit at the time it was filed - particularly given the fact that they were not (and still are not) under indictment. *See Memorandum in Support of Plaintiffs' Objection to Motion for Stay*, C.A. No. 09-470, Docket # 31.[6] Nevertheless, rather than press their compelling legal arguments in opposition to the

[6] Plaintiffs filed the Objection in all cases on July 13, 2010.

Targets' request for a stay, Plaintiffs agreed to a protocol that would effectively limit the discovery that could be sought from, and initiated by, the Targets to document discovery through the end of 2010, with the understanding that discovery issues would be reevaluated at a status conference in January, 2011. Because the Targets cannot be compelled to testify "on behalf of any organization," EPR is effectively shielded from further discovery because of Mr. Caramadre's status as principal Officer, Director and owner of the company. Caramadre and EPR are now attempting to make an end run around the intent and spirit of the parties' negotiation and the Order entered by this Court in order to gain an unfair tactical advantage and conduct one-sided discovery.[7] Indeed, in its opposition to Plaintiff's motion, EPR argues that it "may not, temporarily, be able to respond to certain interrogatories because its two principals are targets." *See Memorandum in Support of EPR's Objection*, C.A. No. 09-470, Docket # 73, at p. 7.[8]

Although it is true that the Order does not specifically state that **EPR** cannot propound interrogatories, Plaintiffs respectfully submit that this undoubtedly was the spirit and intent of the balanced arrangement the Court and parties contemplated. Corporate technicalities aside, Caramadre and EPR are one in the same. It is patently unfair for Caramadre and EPR to engage in full discovery simply by using this closely held corporate entity as a straw man, while at the same hiding behind a discovery shield that was intended, at least by the Plaintiffs, as a good faith and mutual compromise.

[7] Plaintiffs believe that the EPR interrogatories are quite clearly targeted to develop information for use in defense of potential criminal proceedings involving the Targets and that this end gives rise to the Targets' effort to circumvent the equitable discovery balance and limitations established by the ICMO.

[8] EPR filed the Objection in all cases on December 10, 2010.

There is no prejudice to EPR by holding it to the same standards as Caramadre and the other Targets. The Court has not yet established a discovery deadline. In light of the existing restrictions on discovery and amount of work to be done, these cases cannot possibly be reached for trial for several months at the earliest.[9] EPR will have plenty of time to propound interrogatories if and when Caramadre and the other Targets begin to participate fully in the discovery process. In these circumstances, there is no legitimate basis or need for EPR to serve broad and burdensome interrogatories at this time. To allow EPR to do so would be to substantially alter the balance sought to be achieved by the Court and parties by the entry of the ICMO, and to gut the spirit and intent of that Order.

EPR contends that it is reasonable to force Plaintiffs to engage in a lopsided discovery process because the express terms of the ICMO contemplate as much. To the extent EPR advocates for such an inequitable result, Plaintiffs respectfully request that the Court clarify that EPR is being held to the same standard. The ICMO provides that no "Target Defendant, whether on his own behalf or on behalf of an organization *pursuant to the procedures outlined in Rule* 30(b)(6) or *31(a)(4)* [may] be required to respond to any *such interrogatories* or requests for admission, nor be noticed or subpoenaed for any deposition, orally or in writing, until further order of the Court. . . ." ICMO ¶ 5 (emphasis added). The restriction on interrogatories is expressly limited to "such interrogatories" that are governed by "the procedures outlined in Rule . . . 31(a)(4)," *id.*, which addresses "Depositions By Written Questions" – colloquially and formerly referred to as "depositions on written interrogatories." Wright and Miller, 6A Fed. Prac. And Proc. Civ. § 2131 (3d ed.). The ICMO provides no similar protection to Target Defendants from interrogatories governed "by the procedures outlined in" Rule 33.

[9] In addition, the future events in, and the direction of, the ongoing criminal investigation may potentially impact the schedule for completion of discovery in these actions.

Consequently, if EPR's Machiavellian interpretation of the ICMO is to be applied, then it follows that EPR is provided with no reprieve from responding to interrogatories propounded pursuant to Rule 33 - notwithstanding the fact that the three individuals known to have been involved with EPR – Messrs. Caramadre, Radhakrishnan and Maggiacomo – are all Targets.

Further, if EPR and Caramadre are permitted to make an end run around the limitations on testimonial discovery, then Plaintiffs request that the ICMO be amended to provide Plaintiffs with the same freedoms and permit them immediately to obtain full testimonial discovery from EPR. EPR should not be permitted to obtain full discovery while, at the same time, avoiding responding to "testimonial discovery" on the grounds that such discovery will prejudice the rights of Caramadre or any other Target employed by or associated with EPR.

Finally, Plaintiffs respectfully request that the Magistrate Judge's Order requiring Plaintiffs to respond to EPR's interrogatories be stayed pending the outcome of this objection. A stay of the Order is necessary to allow the Court to address the issues raised herein without requiring Plaintiffs to respond to the discovery in the interim, thus rendering the objection partially moot.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court vacate the Magistrate Judge's order denying Plaintiffs' motion for protective order and enter an order striking EPR's interrogatories. Alternatively, Plaintiffs request that the Court modify and amend the ICMO to permit full discovery to be directed to EPR so as to maintain the equity and balance sought to be achieved by that Order.

Respectfully submitted,

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Dated: December 21, 2010

CERTIFICATE OF SERVICE

I certify that the within document was electronically filed with the clerk of the court on December 21, 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