

# EXHIBIT A



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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. )

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C.A. No.: 09-473-WS

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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. )

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C.A. No.: 09-502-WS

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TRANSAMERICA LIFE INSURANCE )  
COMPANY, )  
Plaintiff, )  
vs. )  
LIFEMARK SECURITIES CORP., JOSEPH )  
CARAMADRE, RAYMOUR )  
RADHAKRISHNAN, ESTATE PLANNING )  
RESOURCES, INC. and EDWARD )  
MAGGIACOMO, JR., )  
Defendants. )

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C.A. No. 09-549-WS

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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.		)
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C.A. No. 09-564-WS

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT  
ESTATE PLANNING RESOURCES, INC.'S OBJECTION TO  
PLAINTIFFS' OMNIBUS MOTION FOR PROTECTIVE ORDER STRIKING  
DEFENDANT ESTATE PLANNING RESOURCES, INC.'S INTERROGATORIES**

Defendant Estate Planning Resources, Inc. (“EPR”), by and through the undersigned, submits this Memorandum of Law in support of its Objection to Plaintiffs’ Omnibus Motion for Protective Order Striking Defendant Estate Planning Resources, Inc.’s Interrogatories (the “Omnibus Motion”).

Attempting to avoid having to respond to interrogatories propounded upon them by EPR earlier this fall, Plaintiffs’ argument has an all-too-familiar ring. Despite the fact that the Aegon Companies negotiated and consented to the Initial Case Management Order (“ICMO”) that they helped to draft, they are now asking the Court to release them from it. Just as it should hold them to the terms of their own annuity contracts, which are the subject matter of this litigation, the Court should hold the Plaintiffs to the terms of the ICMO that they accepted in exchange for valuable consideration from the other parties.

### **BACKGROUND**

Plaintiffs commenced these actions in the fall of 2009, but because of deficiencies in their pleadings, the cases have not yet reached the stage where the Federal Rules of Civil Procedure would normally allow them to commence discovery. See Fed. R. Civ. P. 26(d)(1) (“A party may not seek discovery from any sources before the parties have conferred as required by Rule 26(f), except . . . when authorized by these rules, by stipulation, or by court order.”). Typically, parties cannot seek discovery until after the meeting of the parties required by Rule 26(f). Id. That conference does not occur until after all of the parties have filed their answers. See LR Cv 26(a) (“Unless the Court orders otherwise, within fourteen (14) days after the last answer or responsive pleading has been filed by all parties against whom claims have been asserted, the parties shall confer . . .”).

On June 2, 2010, due to the Plaintiffs’ failure to state claims upon which relief could be granted, the Court granted in part the motions to dismiss that the Defendants had filed in response to the Plaintiffs’ first round of Complaints. See Opinion and Order, Western Reserve Life Assurance Co. of Ohio v. Conreal LLC, C.A. No. 09-470 S (D.R.I. June 2, 2010), ECF No. 46 (omnibus Opinion and Order entered in all seven of the above-captioned cases). This prompted the Plaintiffs to file amended Complaints, which several Defendants, including EPR, (the “Moving Defendants”) have now opposed with Motions to Dismiss and Requests for Reconsideration (the “Renewed Motions”). If and only when the Court denies those Renewed Motions will EPR and the other Moving Defendants be required to file their answers. See Fed. R. Civ. P. 12(a)(4)(A). Accordingly, any discovery that the parties have undertaken in the meantime has been subject to extensive negotiation between the parties, and it has required special permission from the Court.

Given the status of several Defendants as targets of an ongoing parallel federal grand jury investigation (such Defendants are hereinafter referred to collectively as the “Targets”), it is understandable that those Targets have strong reservations about participating in civil discovery that risks jeopardizing their Fifth Amendment rights against self-incrimination. For this reason, they filed Motions to Stay these proceedings on June 16, 2010. See, e.g., Motion to Stay with Supporting Memo, Western Reserve Life Assurance Co. of Ohio v. Conreal LLC, C.A. No. 09-470 S (D.R.I. June 16, 2010), ECF No. 48. The Plaintiffs opposed that Motion to Stay, and the Court held a hearing on the matter on August 17, 2010. At this hearing, in response to the Plaintiffs’ protests that a stay could prevent them from taking discovery from the Targets for an indefinite amount of time, the Court urged the parties to reach a compromise.<sup>1</sup>

On September 13, 2010, following a September 1, 2010 chambers conference at which the parties considered the terms of competing proposed discovery orders, and after the parties negotiated several subsequent drafts of a jointly proposed order, the Court entered the ICMO that the parties together submitted on September 8, 2010. See Initial Case Management Order (“ICMO”), Western Reserve Life Assurance Co. of Ohio v. Conreal LLC, C.A. No. 09-470 S (D.R.I. Sept. 13, 2010), ECF No. 58 (omnibus ICMO entered in all seven of the above-captioned cases). The ICMO allowed the Plaintiffs to participate in early discovery prior to the Court’s decision on the Renewed Motions, and in exchange, it afforded the Targets certain protections from testimonial discovery. Since then, the parties have exchanged several discovery requests and responses pursuant to the terms of the ICMO. EPR has relied upon its terms. When Plaintiffs’ counsel contacted EPR’s counsel regarding the interrogatories that EPR served upon

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<sup>1</sup> An earlier compromise between the parties had already allowed the Plaintiffs to participate in the depositions of several of the annuitants for the annuity contracts that are the subject matter of these cases.

the Plaintiffs on November 1, 2010, this was the first time that Plaintiffs' counsel voiced any objection to the terms of the ICMO that they helped to design.

### ARGUMENT

By its own terms, the Court entered the ICMO "pursuant to the parties' agreement . . . ." Id. It was subject to extensive negotiation between the parties, the Plaintiffs had plenty of time to consider its language, and it afforded the Plaintiffs early discovery privileges to which they would not have been entitled absent significant accommodations from the Defendants. For these reasons, the Court should hold the Plaintiffs to its conditions.<sup>2</sup>

In no way does the ICMO preclude EPR from propounding interrogatories. Although it does not allow Targets to propound interrogatories, the distinction it draws between Targets and organizations is self-evident. Paragraph 5 states:

Notwithstanding the pendency of any Motions to Dismiss, the parties may forthwith propound interrogatories pursuant to Rule 33 . . . except that no Target Defendant shall propound interrogatories . . . nor shall any Target Defendant, whether on his own behalf or on behalf of an organization . . . be required to respond to any such interrogatories . . . .

ICMO at ¶ 5. The absence of a restriction upon organizations propounding interrogatories, simply because they are owned by Targets, is unmistakable. Plaintiffs seek to impose an ex post facto restriction upon EPR that it did not contemplate when it agreed to the ICMO.

Contrary to Plaintiffs accusation in their Omnibus Objection, EPR's propounding of interrogatories pursuant to terms that the Plaintiffs negotiated and accepted does not represent "bad faith" on the part of EPR, and it will not be "patently unfair" to the Plaintiffs to enforce the ICMO according to its provisions. Mem. in Supp. of Pls.' Mot. for Protective Order Striking Def. Estate Planning Resources, Inc.'s Interrogatories, Western Reserve Life Assurance Co. of

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<sup>2</sup> Unlike the Plaintiffs' lengthy annuity contracts, the terms of which Plaintiffs are also attempting to rewrite, the ICMO is only five pages, and two and a half pages of that is the Order's omnibus caption.

Ohio v. Conreal LLC, C.A. No. 09-470 S (D.R.I. Dec. 4, 2010), ECF No. 72 at 6, 7. EPR has relied upon the ICMO's requirements in responding to discovery requests propounded upon it by the Plaintiffs. And had EPR wished, it could have opposed the Plaintiffs' request to conduct further early discovery before the Court ruled on EPR's Renewed Motions. Instead, EPR has sought to cooperate with Plaintiffs to provide them with the information that they seek and to keep the expense of further motion practice at a minimum. While EPR may not, temporarily, be able to answer certain interrogatories because its two principals are Targets, requiring Plaintiffs to answer EPR's interrogatories will not pose any similar risks to their Constitutional rights. These cases are still at a preliminary stage, and should the Court determine that Plaintiffs have actually stated viable claims, they can seek to propound interrogatories upon EPR when its principals are no longer under the threat of criminal liability.

#### **CONCLUSION**

For the foregoing reasons, EPR objects to Plaintiffs' Omnibus Motion and requests that the Court deny Plaintiffs' request for a protective order and Plaintiffs' alternative request for a modification to the ICMO to permit full discovery to be directed to EPR.



Respectfully submitted,

ESTATE PLANNING RESOURCES, INC.  
By its attorneys,

/s/ Robert G. Flanders, Jr.

Robert G. Flanders, Jr., Esq. (#1785)  
Eric S. Giroux, Esq. (#7420)  
Matthew H. Parker, Esq. (#8111)  
HINCKLEY, ALLEN & SNYDER LLP  
50 Kennedy Plaza, Suite 1500  
Providence, RI 02903  
Tel. (401) 274-2000  
Fax. (401) 277-9600  
[rflanders@haslaw.com](mailto:rflanders@haslaw.com)  
[egiroux@haslaw.com](mailto:egiroux@haslaw.com)  
[mparker@haslaw.com](mailto:mparker@haslaw.com)

DATED: December 10, 2010

#### **CERTIFICATION**

I hereby certify that on December 10, 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.