

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

WESTERN RESERVE LIFE ASSURANCE)	
CO. OF OHIO)	
Plaintiff,)	
)	C.A. No. 09-470/S
v.)	
)	
JOSEPH CARAMADRE, RAYMOUR)	
RADHAKRISHNAN, ESTATE PLANNING)	THIRD AMENDED
RESOURCES, INC, HARRISON CONDIT and)	COMPLAINT and
FORTUNE FINANCIAL SERVICES, INC.)	JURY DEMAND
Defendants.)	

THIRD AMENDED COMPLAINT

Plaintiff, Western Reserve Life Assurance Co. of Ohio (“Western Reserve”) for its Third Amended Complaint against defendants, alleges:

PARTIES

1. Western Reserve is an Ohio company with its principal place of business in Cedar Rapids, Iowa.
2. Defendant Joseph Caramadre (“Caramadre”) is, on information and belief, a Rhode Island citizen and resident.
3. Defendant Raymour Radhakrishnan (“Radhakrishnan”) is, on information and belief, a Rhode Island citizen and resident.
4. Defendant Estate Planning Resources, Inc. (“Estate Planning Resources”) is, on information and belief, a Rhode Island corporation with its principal place of business in Cranston, Rhode Island.
5. Defendant Harrison Condit (“Condit”) is, on information and belief, a Rhode Island citizen and resident.

6. Defendant Fortune Financial Services, Inc. (“Fortune Financial”) is, on information and belief, a Pennsylvania company with its principal place of business in New Brighton, Pennsylvania.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because plaintiff and defendants are of completely diverse citizenships; and the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00).
8. All defendants have sufficient minimum contacts with Rhode Island such that this Court has general or specific personal jurisdiction over them.
9. Venue is proper in this Court under 28 U.S.C. § 1391(a) because one or more of the defendants reside in this judicial district and/or a substantial part of the events or omissions giving rise to these claims occurred in this judicial district.

BACKGROUND

10. Caramadre is an attorney licensed to practice law in Rhode Island and a self-proclaimed expert in annuities and life insurance products. Caramadre does business through his individual law practice and through his various corporate entities, including Estate Planning Resources.
11. At all relevant times, Caramadre was an agent, officer or employee of Estate Planning Resources and was acting within the scope of his employment or agency relationship.
12. Caramadre has devoted a portion of his law practice and business to identifying perceived “loopholes” in insurance and investment products that, in his opinion, allow individuals to make money or reduce investment risks based, in part, on the shortened life expectancy of terminally ill people. Caramadre and Estate Planning Resources make money by

advising clients to purchase insurance or investment products that have, what Caramadre perceives to be, financially beneficial “loopholes.”

13. One investment scheme that Caramadre has orchestrated and/or participated in involves the purchase of variable annuities. Rather than recommending the purchase of variable annuities for their intended and appropriate use as long-term retirement investment vehicles, Caramadre and/or his associates induce investors to apply for annuities using terminally ill annuitants with whom they have had no prior relationship.
14. Caramadre’s scheme works as follows: Caramadre or his colleagues identify an individual with a terminal illness and, in some cases, offer him or her cash to sign an application for a variable annuity, naming an unknown investor as beneficiary and designating the terminally ill individual as the annuitant. The investor/beneficiary, who frequently has a personal or professional connection with Caramadre, opts for a death benefit feature in the annuity and purportedly pays the annuity premium. At a minimum, the death benefit provides a guaranteed return of premiums paid.
15. Such a transaction is referred to as a Stranger Initiated Annuity Transaction, or “STAT.” Stranger investors may be lured to STAT’s for reasons ranging from the opportunity to receive enhanced death benefits to money laundering.
16. Another attraction to STAT’s is the opportunity to engage in risk-free, short-term investments based on the short life expectancy of the terminally ill annuitant. When the annuitant dies – frequently within days or months of the purchase of the annuity – the beneficiary is able to capture market gains while the annuitant was living. At the same time, the investor is insulated from the risk of loss because of the guaranteed return of premium.

17. In order to locate and entice terminally ill individuals to participate in his investment schemes, Caramadre has created and advertised a “Program for the Terminally Ill.” Caramadre circulated a flyer advertising the program to Hospice patients and churches. *See Exhibit A to Complaint.* Caramadre also has placed advertisements in various newspapers, offering to pay \$2,000 to terminally ill individuals who are willing to participate in various investment schemes that allow him or other individuals (with no relationship to the terminally ill person), to earn a profit based on the short life expectancy of the terminally ill person. *See Exhibit 1 attached to the First Amended Complaint.*
18. Western Reserve offers a range of financial products for sale to the public. These products are sold nationally by a network of independent Broker/Dealers, including Fortune Financial. Condit is an agent or employee of Fortune Financial, selling insurance and investment products to individuals in Rhode Island.
19. One of the products offered by Western Reserve is a variable annuity referred to as the “WRL Freedom Premier III” (“WRL Annuity”). The WRL Annuity prospectus, *Exhibit A to the Complaint*, explains that variable annuities are long-term financial vehicles designed for retirement purposes. The main features of the WRL Annuity are tax deferred treatment of earnings, guaranteed death benefit options and guaranteed lifetime payout options. Because the annuities are “variable,” the owner of the annuity is able to participate in the bond and equity market and realize a return based on market performance. The WRL Annuity also provides a standard death benefit that is the greater of either the policy value or the cash value of the policy as of the reported death of the annuitant. For an additional fee, the WRL Annuity offers an optional Return of Premium

Death Benefit, which guarantees that the beneficiaries will receive no less than the amount of the premiums paid, minus any adjusted partial surrenders. The guaranteed death benefit is not tied to market performance.

20. Anthony Pitocco is terminally ill with lung cancer.
21. Upon information and belief, Radhakrishnan claims that he identified Pitocco as a potential annuitant under Caramadre's STAT investment scheme.
22. At all relevant times, Radhakrishnan was an agent or employee of Estate Planning Resources and acting within the scope of his agency or employment relationship.
23. Upon information and belief, Radhakrishnan claims that Pitocco agreed to sign an application for a WRL Annuity by paying him a total of \$2,000. Radhakrishnan did not explain to Pitocco, and Pitocco had no knowledge, that he would be entering into an annuity contract, how the WRL Annuity worked, or what Pitocco's involvement in the annuity would be.
24. Because neither Caramadre, Radhakrishnan nor Estate Planning Resources were authorized to sell Western Reserve's annuities, it was arranged that Condit, as an agent of Western Reserve, would sign and submit the application to Western Reserve for consideration.
25. On or about January 20, 2009, Western Reserve received an application to purchase a WRL Annuity, purportedly signed by Pitocco. *See Exhibit B to the Complaint, Tab 1.*
26. The application was submitted by or through Condit and/or Fortune Financial.
27. The application listed Conreal, LLC ("Conreal") as the owner and beneficiary and requested a guaranteed "Return of Premium Death Benefit."
28. The application was accompanied by a \$250,000 initial premium payment.

29. Condit signed the application as “Registered Representative/Licensed Agent” with the firm of Fortune Financial.
30. At all times relevant hereto, Condit was an agent or employee of Fortune Financial and was acting within the scope of his employment or agency relationship.
31. In reliance on the representations contained in the application, Western Reserve issued Annuity Policy Number 09-01N6042544 (Annuity), with a policy date of January 27, 2009, attached as *Exhibit C to the Complaint*.
32. Conreal made an additional premium payment of \$1,750,000.00 three days later, on January 30, 2009.
33. In connection with the sale of the Annuity, Western Reserve paid a \$140,000 commission to Condit and/or Fortune Financial.
34. Within the months following the issuance of the Annuity, Western Reserve learned that:
 - i.) Pitocco had no knowledge that an application for the Annuity had been submitted in his name or that the Annuity had been issued; ii.) the application was submitted with undisclosed knowledge that Pitocco was terminally ill; and iii.) there was no relationship between Pitocco and Conreal.
35. Pitocco provided the Affidavit attached as *Exhibit B to the Complaint*.
36. Pitocco denies having signed the application.
37. Pitocco has never met or spoken with Condit or anyone from Conreal or Fortune Financial about applying for any annuity contracts or any other issues. Pitocco further denies having met with Radhakrishnan or Caramadre and states that his signature was forged to the application.

38. Western Reserve, by letter of September 24, 2009, notified Pitocco and Conreal that it was exercising its right to rescind the annuity contract because it had been procured by fraud or misrepresentation and was otherwise void because Conreal lacked an insurable interest in Pitocco. A true and correct copy of the rescission notice sent to Conreal and Pitocco is attached as *Exhibit D to the Complaint*.
39. Conreal accepted Western Reserve's return of premiums and the annuity has been rescinded.

COUNT I – FRAUD IN THE FACTUM (Damages)
(CARAMADRE, RADHAKRISHNAN, ESTATE PLANNING RESOURCES, CONDIT and FORTUNE FINANCIAL)

40. Western Reserve restates and realleges all preceding paragraphs as if set forth at length herein.
41. All Defendants committed fraud in the factum by either forging Pitocco's signature to the annuity application and submitting it to Western Reserve, or by concealing the existence, nature and essential terms of the annuity from Pitocco in order to get him to sign the application under which he purportedly agreed to serve as an annuitant.
42. As a result of the fraud in the factum perpetrated by Defendants, any purported agreement by Pitocco to serve as an annuitant is void and the application that he unwittingly signed (or to which his signature was forged) lacked all legal significance.
43. Having forged or obtained Pitocco's signature under false pretenses, Defendants submitted the legally insignificant application to Western Reserve with the intention of giving Western Reserve the false or misleading impression to that Pitocco knowingly and voluntarily signed the application.

44. Based on the false or misleading application that Defendants' provided, Western Reserve entered the annuity contract without knowledge of the true nature or character of the terms of the agreement.
45. Defendants' conscious and deliberate efforts to work together to conceal the facts surrounding the procurement of the application (whether or not forged), combined with the nature of Condit's and Fortune Financial's relationship with Western Reserve and their conspiracy with the remaining defendants, deprived Western Reserve of the reasonable opportunity to obtain knowledge of the true character, nature and contents of the annuity contract.
46. Western Reserve has been harmed by the fraud in the factum committed by all Defendants by, among other things, issuing the Annuity, paying commissions on the fraudulently obtained Annuity and incurring market losses caused by the fraudulently obtained Annuity.

COUNT II – FRAUDULENT INDUCEMENT (Damages)
(CARAMADRE, RADHAKRISHNAN, ESTATE PLANNING RESOURCES, CONDIT and FORTUNE FINANCIAL)

47. Western Reserve restates and realleges all preceding paragraphs as if set forth at length herein.
48. Caramadre, Radhakrishnan, Estate Planning Resources, Condit and Fortune Financial acted in concert to submit the application containing intentionally omitted and misleading information concerning Pitocco' knowledge of the application, his signature on the application, his health condition, his life expectancy, the purported payment to Pitocco, and the absence of a relationship between Pitocco and Conreal, Condit and Fortune Financial.

49. At the time the application was submitted, Caramadre, Radhakrishnan, Estate Planning Resources, Condit and Fortune Financial knew the representations and omissions contained therein were false or misleading.
50. Caramadre, Radhakrishnan, Estate Planning Resources, Condit and Fortune Financial submitted, or arranged for the submission of, the false or misleading application with the intention that Western Reserve would rely on the information, or lack thereof, contained in the application.
51. Western Reserve relied and acted on the false or misleading representations and omissions and issued the Annuity when it otherwise would not have if there had been full disclosure to Western Reserve.
52. Western Reserve has been harmed by the fraudulent acts of Caramadre, Radhakrishnan, Estate Planning Resources, Condit and Fortune Financial by, among other things, issuing the Annuity, paying commissions on the fraudulently obtained Annuity and incurring market losses caused by the fraudulently obtained Annuity.

COUNT III - BREACH OF CONTRACT
(FORTUNE FINANCIAL)

53. Western Reserve restates and realleges all preceding paragraphs as if set forth at length herein.
54. Western Reserve entered a Broker-Dealer Supervisory and Service Agreement with Fortune Financial in January 2001, (“2001 Agreement”). The 2001 Agreement authorized Fortune Financial to sell insurance and annuity products for Western Reserve. The 2001 Agreement also governed the relationship, rights, and responsibilities of Western Reserve and Fortune Financial.

55. Pursuant to Part 2 of the 2001 Agreement, Fortune Financial was obligated to train, supervise and control “all Representatives associated with [Fortune Financial] who are engaged directly or indirectly in the offer or sale of” Western Reserve’s annuities and policies. Fortune Financial was further obligated to “ensure that [Western Reserve’s products] are offered, sold and serviced only through Representatives who comply with all appropriate state insurance licensing requirements.” Fortune Financial has breached the 2001 Agreement by failing to train, supervise and control Condit consistently with the obligations set forth in Part 2 of the 2001 Agreement and to ensure that its employees or agents, such as Condit, did not coordinate with unlicensed individuals to sell Western Reserve’s annuities.
56. Pursuant to Part 11 of the 2001 Agreement, Fortune Financial is obligated to “indemnify and hold harmless . . . [Western Reserve] from any claims, damages, expenses, liabilities or causes of action, asserted or brought by anyone resulting from any negligent, fraudulent, or intentional acts, omissions, or errors of Producers, their employees, registered representatives, other representatives, or agents in the offering for sale, solicitation, or servicing of [Western Reserve’s annuities], and from any negligent, fraudulent, or intentional acts, omissions, or errors of Producers, their employees, registered representatives, or representatives, or agents in violation of Federal or State laws or regulations and NASD rules of any nature, applicable to the offering for sale, solicitation, or servicing of” Western Reserve’s annuities. Pursuant to Part 11 of the 2001 Agreement, Fortune Financial is further obligated to “assume full responsibility for the activities of all persons associated with it who are engaged directly or indirectly in the sales and securities operations of [Fortune Financial, and to] indemnify and hold

harmless . . . [Western Reserve] from any claims, damages, expenses, liabilities or causes of action, asserted or brought by anyone , resulting from any private business transactions of any associated persons which are the subject of’ Part 11 of the 2001 Agreement.

Fortune Financial has breached its obligation to indemnify and hold harmless Western Reserve for financial losses, claims, damages, expenses and liabilities incurred within the contemplation of Part 11 of the 2001 Agreement.

57. Fortune Financial was obligated to abide by, and enforce the principles set forth in a September 1, 1997 Code of Professional Conduct (“Ethics Code”), which provides, among other things, that the sale of insurance products should be conducted “according to the high standards of honesty and fairness. . . .” The Ethics Code further provides that Western Reserve’s products should be sold to “meet [its] customers’ **insurable** needs or financial objectives” and that its distributors are encouraged to use “appropriate fact finding tools” to assist customers determine their “**insurable** needs and financial objectives. . . .” (Emphasis added). The Ethics Code additionally provides that Western Reserve’s products should be marketed and sold in compliance “with all laws and regulations. . . .” Fortune Financial further was obligated to, among other things, establish and follow policies and procedures designed to monitor the sales and practices of its agents. Fortune Financial has breached its obligations as set forth in the Ethics Code.
58. Had Fortune Financial complied with its obligations under the 2001 Agreement and the Ethics Code, Western Reserve would not have issued the Annuity, would not have paid commissions thereon and would not have incurred market loss.

59. Western Reserve has incurred financial loss, claims, damages or liabilities as a result of Fortune Financial's breaches of the 2001 Agreement.

COUNT IV - DECLARATORY JUDGMENT
(FORTUNE FINANCIAL)

60. Western Reserve restates and realleges all preceding paragraphs as if set forth at length herein.
61. Western Reserve is entitled to be indemnified by Fortune Financial for all financial losses, obligations, claims, damages and liabilities that it might incur in the future that arise out of, or are based upon the acts or omissions of individuals for whom Fortune Financial is responsible, within the contemplation of Part 11 2001 Agreement.

COUNT V - BREACH OF DUTY OF GOOD FAITH AND FAIR DEALINGS
(FORTUNE FINANCIAL)

62. Western Reserve restates and realleges all preceding paragraphs as if set forth at length herein.
63. The 2001 Agreement incorporates an implied duty of good faith and fair dealings.
64. Fortune Financial, by the acts of its agent, Condit, breached its duty of good faith and fair dealing owed to Western Reserve by engaging in conduct designed or intended to obtain the Annuity without the knowledge of Pitocco, and without disclosing his known health condition and life expectancy, and without disclosing Conreal's lack of an insurable interest in Pitocco.
65. Western Reserve has been financially harmed as a result of Fortune Financial's breach.

COUNT VI - CIVIL LIABILITY FOR CRIMES AND OFFENSES
(CONDIT and FORTUNE FINANCIAL)

66. Western Reserve restates and realleges all preceding paragraphs as if set forth at length herein.

67. Condit and Fortune Financial prepared, assisted, abetted or solicited the preparation and submission of the application for the Annuity to Western Reserve. In doing so, Fortune Financial and Condit acted with the intent to deceive and with knowledge that information or omissions on the application were false or misleading and were material to Western Reserve.
68. The Annuity is an insurance policy within the contemplation of R.I. Gen. Laws § 11-41-29.
69. Western Reserve is an “insurer” within the meaning of § 11-41-29(a)(1).
70. The conduct of Condit and Fortune Financial constitutes criminal insurance fraud in violation of § 11-41-29.
71. Defendants’ forgery of the applications constitutes a crime under R.I. Gen. Laws § 11-17-1.
72. Western Reserve has suffered injury as a result of such crime and may recover its damages for such injury pursuant to R.I. Gen. Laws § 9-1-2.

COUNT VII - UNJUST ENRICHMENT
(FORTUNE FINANCIAL and CONDIT)

73. Western Reserve restates and realleges all preceding paragraphs as if set forth at length herein.
74. Western Reserve paid commissions to Fortune Financial and/or Condit as a result of the sale of the Annuity and, as such, a Fortune Financial and/or Condit have appreciated a benefit conferred by Western Reserve.
75. It would be inequitable for Fortune Financial or Condit to retain the commission previously paid because it was procured by their tortious or criminal acts as described herein.

COUNT VIII – NEGLIGENCE
(FORTUNE FINANCIAL and CONDIT)

76. Western Reserve restates and realleges all preceding paragraphs as if set forth at length herein.
77. Condit owed a duty to Western Reserve to learn and obtain information material to Western Reserve’s review of the application for the Annuity, including the facts that Pitocco was terminally ill with lung cancer, that Pitocco had a limited life expectancy due to his lung cancer, that Conreal had no relationship with Pitocco and lacked an insurable interest in Pitocco, that Pitocco did not sign the application and that Pitocco did not knowingly apply for the Annuity. Condit breached his duty of care owed to Western Reserve by failing to obtain and report such information to Western Reserve in connection with the application for the Annuity, thereby causing Western Reserve to issue the Annuity.
78. Fortune Financial owed a duty to Western Reserve to adequately supervise and train its employees to ensure that insurance and investment products such as the Annuity would not be issued to terminally ill individuals, issued with named beneficiaries who have no insurable interest in the annuitant, and issued without the knowledge or consent of the annuitant. Fortune Financial’s failure to adequately supervise and train Condit caused Western Reserve to issue the Annuity.
79. Western Reserve has been financially harmed by the negligence of Condit and Fortune Financial.

COUNT IX – BREACH OF CONTRACT
(CONDIT)

80. Western Reserve restates and realleges all preceding paragraphs as if set forth at length herein.
81. In September 2008, Western Reserve received a Producer Appointment Application (“Application”) for Condit to sell certain investment products offered by Western Reserve, including the type of annuity at issue in this case, through his affiliation with Fortune Financial. In the Application, Condit agreed that if Western Reserve consented to the appointment, then he would comply with Western Reserve’s rules and regulations, applicable state laws and the Ethics Code identified herein.
82. Western Reserve granted the Application, thereby designating Condit as an agent affiliated with Fortune Financial. Having been appointed as an agent, Condit was contractually bound by his promises in the Application.
83. Condit’s participation in, and concealment of, the STAT scheme was contrary to his obligation under the Ethics Code to conduct himself “according to the high standards of honesty and fairness,” to use “appropriate fact finding tools” to assist customers determine their “insurable needs and financial objectives,” and to sell products that meet customers’ “insurable needs or financial objectives” and constituted a breach of his contractual obligations owed to Western Reserve.
84. Condit’s participation in, and concealment of, the STAT scheme was contrary to state law and Western Reserve’s rules and regulations and constituted a breach of his contractual obligations owed to Western Reserve.

85. Had Condit not breached his contractual obligations owed to Western Reserve, Western Reserve would not have issued the Annuity, would not have paid commissions thereon and would not have incurred market loss.

86. Western Reserve has incurred financial loss, claims, damages or liabilities as a result of Condit's breaches of his contractual obligations owed to Western Reserve.

COUNT X - BREACH OF DUTY OF GOOD FAITH AND FAIR DEALINGS

(CONDIT)

87. Western Reserve restates and realleges all preceding paragraphs as if set forth at length herein.

88. Condit's contractual arrangement with Western Reserve incorporates an implied duty of good faith and fair dealings.

89. Condit breached his duty of good faith and fair dealing owed to Western Reserve by engaging in conduct designed or intended conceal the known health condition and life expectancy of Pitocco, without disclosing the owner's and/or beneficiary's lack of an insurable interest in the Pitocco, without disclosing the forgery of Pitocco's signature or payments to him to induce him to sign the application, and secretly providing Estate Planning Resources, Caramadre and/or Radhakrishnan with Western Reserve's applications so that they could broker the sale of the annuity. In so engaging in this conduct, Condit was acting for a purpose contrary to that for which the contract was made.

90. Western Reserve has been financially harmed as a result of Condit's breach.

WHEREFORE, Western Reserve respectfully requests that the Court grant the following relief:

a) A judgment against Caramadre, Radhakrishnan, Estate Planning Resources, Condit and Fortune Financial, jointly and severally, awarding Western Reserve damages for, among other things, commissions paid in connection with the Annuity, market losses suffered as a result of the issuance of the annuity, and costs, attorney's fees and expenses incurred investigating and pursuing this lawsuit;

b) A declaration that Fortune Financial must indemnify Western Reserve for all losses, claims, damages and liabilities that Western Reserve might incur in the future in connection with the Annuity;

c) Punitive and nominal damages;

d) Prejudgment interest; and

e) Any other relief as the Court deems just and equitable.

JURY DEMAND: Western Reserve hereby requests trial by jury on all issues so triable.

Respectfully submitted,

/s/ Brooks R. Magratten
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Dated: March 7, 2011

CERTIFICATE OF SERVICE

I certify that the within document was electronically filed with the clerk of the court on March 7, 2011, 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_____