

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

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

vs.)

C.A. No. 09-470-S

JOSEPH CARAMADRE, RAYMOUR)
RADHAKRISHNAN, ESTATE PLANNING)
RESOURCES, INC., HARRISON CONDIT,)
and FORTUNE FINANCIAL SERVICES,)
INC.,)
Defendants;)

TRANSAMERICA LIFE INSURANCE)
COMPANY,)
Plaintiff,)

vs.)

C.A. No. 09-549-WS

LIFEMARK SECURITIES CORP., JOSEPH)
CARAMADRE, RAYMOUR)
RADHAKRISHNAN, ESTATE PLANNING)
RESOURCES, INC. and EDWARD)
MAGGIACOMO, JR.,)
Defendants; and)

**PLAINTIFF’S ANSWER TO COUNTERCLAIM
OF LIFEMARK SECURITIES CORP.**

Plaintiff Transamerica Life Insurance Company (“Plaintiff”) for its Answer to the Counterclaim of Defendant Lifemark Securities Corp. (“Lifemark”) filed in C.A. No. 09-549 on April 8, 2011 states as follows:

Plaintiff denies the allegations contained in the introduction (unnumbered) paragraph of Lifemark’s Counterclaim.

1. Plaintiff admits the allegations contained in paragraph 1.

2. Plaintiff admits the allegations contained in paragraph 2.

3. Plaintiff admits the allegations contained in paragraph 3.

4. Plaintiff admits the allegations contained in paragraph 4.

5. Plaintiff states that the Transamerica Landmark Annuity (“Landmark Annuity”) prospectus attached as Exhibit B to Plaintiff’s Second Amended Complaint (“Complaint”) speaks for itself, and Plaintiff denies the allegations contained in paragraph 5 to the extent that they are inconsistent with the prospectus.

6. Plaintiff states that the Landmark Annuity prospectus speaks for itself, and Plaintiff denies the allegations contained in paragraph 6 to the extent that they are inconsistent with the prospectus.

7. Plaintiff states that the terms of the Landmark Annuity and prospectus speak for themselves, and Plaintiff denies the allegations contained in paragraph 7 to the extent that they are inconsistent with the Landmark Annuity and/or the prospectus.

8. Plaintiff states that the terms of the Landmark Annuity and prospectus speak for themselves, and Plaintiff denies the allegations contained in paragraph 8 to the extent that they are inconsistent with the Landmark Annuity and/or the prospectus.

9. Plaintiff states that the terms of the Landmark Annuity and prospectus speak for themselves, and Plaintiff denies the allegations contained in paragraph 9 to the extent that they are inconsistent with the Landmark Annuity and/or the prospectus.

10. Plaintiff states that the allegations of the Complaint speak for themselves, and Plaintiff denies the allegations contained in paragraph 10 to the extent that they are inconsistent with the Complaint.

11. In answer to the allegations contained in paragraph 11, Plaintiff admits that the Rose Annuity, Castillona Annuity, Carnevale Annuity, Robichaud Annuity, Horton Annuity, and the DiGiovanni Annuity (collectively, the “Subject Annuities”) were Landmark Annuities, and Plaintiff further states that the terms of the Subject Annuities speak for themselves, and Plaintiff denies the allegations contained in paragraph 11 to the extent that they are inconsistent with the Subject Annuities.

12. Plaintiff admits the allegations contained in paragraph 12.

13. Plaintiff admits the allegations contained in paragraph 13.

14. Plaintiff admits the allegations contained in paragraph 14.

15. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 and therefore those allegations are denied.

16. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 and therefore the allegations are denied.

17. Plaintiff admits the allegation that it has provided Lifemark with variable annuity application forms in connection with the offering for sale of variable annuities such as the Subject Annuities and further states that the variable annuity application forms speak for themselves. Plaintiff denies the allegations contained in paragraph 17 to the extent that they are inconsistent with the application forms and denies the remaining allegations.

18. In answer to the allegations contained in paragraph 18, Plaintiff admits that the Landmark Annuity application form was prepared by Plaintiff, and Plaintiff denies the remaining allegations contained in paragraph 18.

19. Plaintiff denies the allegations contained in paragraph 19.

20. Plaintiff admits the allegations contained in paragraph 20.

21. Plaintiff admits the allegations contained in paragraph 21.

22. Plaintiff admits the allegations contained in paragraph 22.

23. Plaintiff states that the Landmark Annuity application speaks for itself, and Plaintiff denies the allegations contained in paragraph 23 to the extent that they are inconsistent with the Landmark Annuity application form.

24. Plaintiff states that the Landmark Annuity application speaks for itself, and Plaintiff denies the allegations contained in paragraph 24 to the extent that they are inconsistent with the Landmark Annuity application form.

25. Plaintiff denies the allegations contained in paragraph 25 and further states that the failure by Lifemark and/or its agent to disclose that annuitants were terminally ill at the time applications for annuities were submitted were material and fraudulent omissions.

26. Plaintiff denies the allegations contained in paragraph 26 and further states that the failure by Lifemark and/or its agent to disclose that annuitants were terminally ill at the time applications for annuities were submitted were material and fraudulent omissions.

27. Plaintiff denies the allegations contained in paragraph 27 and further states that the failure by Lifemark and/or its agent to disclose that annuitants were terminally ill at the time the applications for the annuities were submitted were material and fraudulent omissions.

28. Plaintiff denies the allegations contained in paragraph 28 because the allegations were vague, unclear and ambiguous. Plaintiff further states that the failure by Lifemark and/or its agent to disclose that annuitants were terminally ill at the time applications for annuities were submitted were material and fraudulent omissions.

29. Plaintiff admits the allegations contained in paragraph 29 and further states that the failure by Lifemark and/or its agent to disclose that the annuitants for the Subject Annuities

were terminally ill at the time the applications for the Landmark Annuities were submitted were material and fraudulent omissions.

30. Plaintiff denies the allegations contained in paragraph 30 and further states that the failure by Lifemark and/or its agent to disclose that annuitants were terminally ill at the time applications for annuities were submitted were material and fraudulent omissions.

31. Plaintiff admits the allegations contained in paragraph 31 and further states that the failure by Lifemark and/or its agent to disclose that annuitants were terminally ill at the time applications for annuities were submitted were material and fraudulent omissions.

32. Plaintiff denies the allegations contained in paragraph 32.

33. Plaintiff denies the allegations contained in paragraph 33 as they pertain to “enhanced death benefits” and “other features” because those terms or phrases are vague, unclear and ambiguous. Plaintiff denies the remaining allegations contained in paragraph 33.

34. Plaintiff denies the allegations contained in paragraph 34.

35. Plaintiff denies the allegations contained in paragraph 35 because the allegations are vague, unclear and ambiguous.

36. Plaintiff denies the allegations contained in paragraph 36.

37. Plaintiff admits the allegations contained in paragraph 37.

38. Plaintiff admits the allegations contained in paragraph 38.

39. Plaintiff admits the allegations contained in paragraph 39.

40. Plaintiff admits the allegations contained in paragraph 40.

41. Plaintiff denies the allegations contained in paragraph 41 because the allegations are vague, unclear and ambiguous.

42. Plaintiff states that the Landmark Annuity applications used in connection with the Subject Annuities speak for themselves, and Plaintiff denies the allegations contained in paragraph 42 to the extent that they are inconsistent with the Landmark Annuity applications.

43. Plaintiff admits the allegations contained in paragraph 43 and further states that the failure by Lifemark and/or its agent to disclose their knowledge concerning the lack of any relationship between the Owners and the Annuitants of annuities issued by Plaintiff, including the Subject Annuities, were material and fraudulent omissions.

44. Plaintiff denies the allegations contained in paragraph 44.

45. Plaintiff denies the allegations contained in paragraph 45.

46. Plaintiff denies the allegations contained in paragraph 46.

47. Plaintiff admits that the annuitants for the Subject Annuities were the measuring lives for the Subject Annuities. Plaintiff denies the remaining allegations contained in paragraph 47.

48. Plaintiff admits the allegations contained in paragraph 48.

49. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49 and therefore those allegations are denied.

50. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 and therefore those allegations are denied.

51. Plaintiff admits the allegations contained in paragraph 51 and further states that Plaintiff relied on the material and fraudulent omissions by Lifemark and/or its agent in issuing the Subject Annuities.

52. Plaintiff admits the allegations contained in paragraph 52 and further states that Plaintiff relied on the material and fraudulent omissions by Lifemark and/or its agent in issuing the Subject Annuities.

53. Plaintiff admits the allegations contained in paragraph 53 and further states that Plaintiff relied on the material and fraudulent omissions by Lifemark and/or its agent in issuing the Subject Annuities.

54. Plaintiff admits the allegations contained in paragraph 54.

55. Plaintiff admits the allegations contained in paragraph 55 and further states that Plaintiff relied on the material and fraudulent omissions by Lifemark and/or its agent in issuing the Subject Annuities.

56. Plaintiff admits the allegations contained in paragraph 56 and further states that Plaintiff relied on the material and fraudulent omissions by Lifemark and/or its agent in issuing the Subject Annuities.

57. Plaintiff denies the allegations contained in paragraph 57.

58. Plaintiff denies the allegations contained in paragraph 58.

59. Plaintiff states that the terms of any agreement between Plaintiff and Lifemark, including, without limitation, any indemnification agreement speak for themselves, and Plaintiff denies the allegations contained in paragraph 59 to the extent that they are inconsistent with the terms of agreements between Plaintiff and Lifemark.

60. Plaintiff states that the terms of any agreement between Plaintiff and Lifemark, including, without limitation, any indemnification agreement speak for themselves, and Plaintiff denies the allegations contained in paragraph 60 to the extent that they are inconsistent with the terms of agreements between Plaintiff and Lifemark.

61. Plaintiff denies the allegations contained in paragraph 61.

62. Plaintiff denies the allegations contained in paragraph 62.

63. Plaintiff denies the allegations contained in paragraph 63.

COUNT I

64. Plaintiff repeats and restates its responses to paragraph 1 through 63 of the Counterclaim as if fully set forth herein.

65. Plaintiff denies the allegations contained in paragraph 65.

COUNT II

66. Plaintiff repeats and restates its responses to paragraph 1 through 65 of the Counterclaim as if fully set forth herein.

67. Plaintiff denies the allegations contained in paragraph 67.

COUNT III

68. Plaintiff repeats and restates its responses to paragraph 1 through 67 of the Counterclaim as if fully set forth herein.

69. Plaintiff denies the allegations contained in paragraph 69.

SEPARATE AND ADDITIONAL DEFENSES

By alleging the defenses set forth below, Plaintiff is not agreeing or conceding that it has the burden of proof or the burden of persuasion on any of the issues raised in the defenses. Further, all such defenses are pled in the alternative and do not constitute an admission of liability or that Lifemark is entitled to any relief whatsoever. Plaintiff expressly reserves the right to amend and/or supplement its defenses.

First Affirmative Defense

Lifemark's Counterclaim fails to state a claim upon which relief can be granted.

Second Affirmative Defense

Lifemark's Counterclaim is barred, in whole or in part, by the doctrine of waiver.

Third Affirmative Defense

Lifemark's Counterclaim is barred, in whole or in part, under the doctrine of estoppel.

Fourth Affirmative Defense

Lifemark's Counterclaim is barred, in whole or in part, by the doctrine of unclean hands.

Fifth Affirmative Defense

Lifemark cannot recover on its Counterclaim because it had a duty to mitigate its alleged damages, but failed to do so.

Sixth Affirmative Defense

Lifemark's Counterclaim is barred or reduced by Lifemark's breaches of contract.

Seventh Affirmative Defense

Lifemark's Counterclaim is barred by reason of its failure to perform its obligations under the contract.

Eighth Affirmative Defense

Lifemark's Counterclaim is barred, in whole or in part, because Lifemark's damages, if any, were caused by Lifemark's own acts or omissions.

Ninth Affirmative Defense

Lifemark's Counterclaim is barred, in whole or in part, to the extent that its damages, if any, resulted from the acts, omissions, or culpable conduct of some other person or persons for whom Plaintiff is not legally responsible.

Tenth Affirmative Defense

Any amount sought to be recovered by Lifemark on its Counterclaim is barred by Plaintiff's right of offset based on the amounts due to Plaintiffs from Lifemark by way of damages.

Eleventh Affirmative Defense

Plaintiff has not knowingly or intentionally waived any applicable affirmative defense and reserves the right to assert and rely on such other applicable affirmative defenses as may later become available or apparent. Plaintiff further reserves the right to amend its answer and affirmative defenses accordingly and/or to delete affirmative defenses that it determines are not applicable during the course of discovery in this action.

Dated: April 18, 2011

Respectfully submitted

/s/ Michael J. Daly

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Michael J. Daly, Esq. No. 6729

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UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

CERTIFICATE OF SERVICE

I certify that the within document was electronically filed with the clerk of the court on April 18, 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.

Dated: April 18, 2011

Respectfully submitted

/s/ Michael J. Daly _____