

IN THE UNITED STATES DISTRICT COURT FOR THE  
CENTRAL DISTRICT OF ILLINOIS  
PEORIA DIVISION

DEBRA K. KEACH and PATRICIA A. SAGE, )

Plaintiffs, )

vs. )

Case No. 01-1168

U.S. TRUST COMPANY, NA., f/k/a U.S. TRUST )  
COMPANY OF CALIFORNIA, NA., et al., )

Defendants. )

DEFENDANTS' RULE 15  
MOTION TO AMEND ANSWER

Now come the Defendants, Ellen D. Foster, as Executrix, Melvyn R. Regal, Stephen P. Bartley, Michael F. Norbutas, Frederick J. Stuber and Ashley Anne Foster, by their attorneys, Charles G. Roth, James W. Springer and Joseph Z. Sudow of Kavanagh, Scully, Sudow, White & Frederick, P.C., and pursuant to F.R.C.P. 15(a) and (b) move this Court for leave to amend their Answer to Plaintiffs' Amended Complaint, and in support state as follows:

1. Rule 15(a) provides that a party may amend a pleading by leave of court or by written consent of the adverse party and that leave shall be freely given when justice so requires.

2. Rule 15(b) provides that a party may amend the pleadings to cause them to conform to the evidence and raise issues tried by the parties. Further, that the motion may be made at any time, even after judgment. Further, this rule provides that the court may allow pleadings to be amended and shall do so freely when the preservation of the merits of the action will be served thereby and an objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits.

3. The answers to paragraphs 12 and 47 are amended to provide completeness and reflect subsequent state probate court decision.

4. As to paragraphs 1, 199, 203, 244, 245, 249 and 250 discovery taken and completed now permits a more definitive answer.

5. The amendment requested by these Defendants as to paragraphs 119, 121 and 212 is sought solely to clarify the Answer of these Defendants denying all liability and admitting no wrongdoing or breach of duty. The amendment is sought to specifically conform to the evidence as disclosed in the discovery portion of the case and now completed by the Plaintiffs. That discovery includes both fact and opinion witnesses deposed by Plaintiffs' counsel. The substance of the proposed new Answer is not different from the substance of the original Answer and the amendment seeks only clarification.

a. Paragraph 119 of Plaintiffs' Amended Complaint alleges that F&G's counsels and directors joked at Board of Director meetings about MBC having to

comply with the law. Specifically, Sudow included in a report a cartoon critical of the legal profession. These Defendants admitted the fact and that Sudow included in a report in 1997 a cartoon. It is because of the Plaintiffs' subsequent unwarranted and unjustifiable implication from this allegation that these Defendants seek to amend their Answer denying Plaintiffs' counsels' implications of lawlessness. The deposition and document evidence to date indicates no evil or fraudulent motivation and to the contrary an expensive and dedicated effort to comply with Federal and State regulations. As more fully shown in the response by Defendants' Regal and Foster to Plaintiffs' First Motion for Summary Judgment, F&G and MBC employed outside counsel with regards to sweepstakes regulation and compliance with ERISA and ESOP regulations. Plaintiffs have no recourse other than innuendo from the harmless inclusion of a line drawing incorporated in a report to the Board of Directors. Because of the sinister inference Plaintiffs' counsel persist in drawing from this bit of humor these Defendants seek leave to file an Amended Answer flatly denying any inference of wrongdoing.

b. Paragraph 121 is incorrectly read by the Plaintiffs as inferring a causal relationship between one date and an event months later. Again, it is the unwarranted inference that is further denied in the Amended Answer.

c. Paragraph 212 of Plaintiffs' Amended Complaint is read reasonably to refer only to the perfunctory action of the Executive Committee on

20 December 1995. The document, of course, speaks for itself. It was never intended to make disclosure and was an internal document specific to the Executive Committee and the Board of Directors. These Defendants read the language "... did not otherwise adequately disclose ..." as referring to the Executive Committee document only. That Foster, Regal and Pellegrino through other means did adequately disclose and deny liability is repeatedly asserted in the Answer of these Defendants in paragraphs 4, 11, 14, 231, 237, 256, 257, 259, 271 and 272. Rather than confronting the evidence as presented in the Response by Regal and Foster to Plaintiffs' Motion for Summary Judgment, Plaintiffs' attorneys now claim that these Defendants have admitted at paragraph 212 what they have consistently otherwise denied. Plaintiffs' counsel now reads their own notice pleading allegation as including not only the in-house Executive Committee action but also apparently every other action ever taken. Such a reading is neither reasonable nor fair and certainly at odds with every other pleading made by these Defendants.

6. Plaintiffs cannot claim prejudice because the proposed changes in answer are made either to conform to the evidence produced during discovery or to repeat and clarify an answer negating an inference.

7. The discovery to date has shown that a number of affirmative defenses are appropriate in this case.

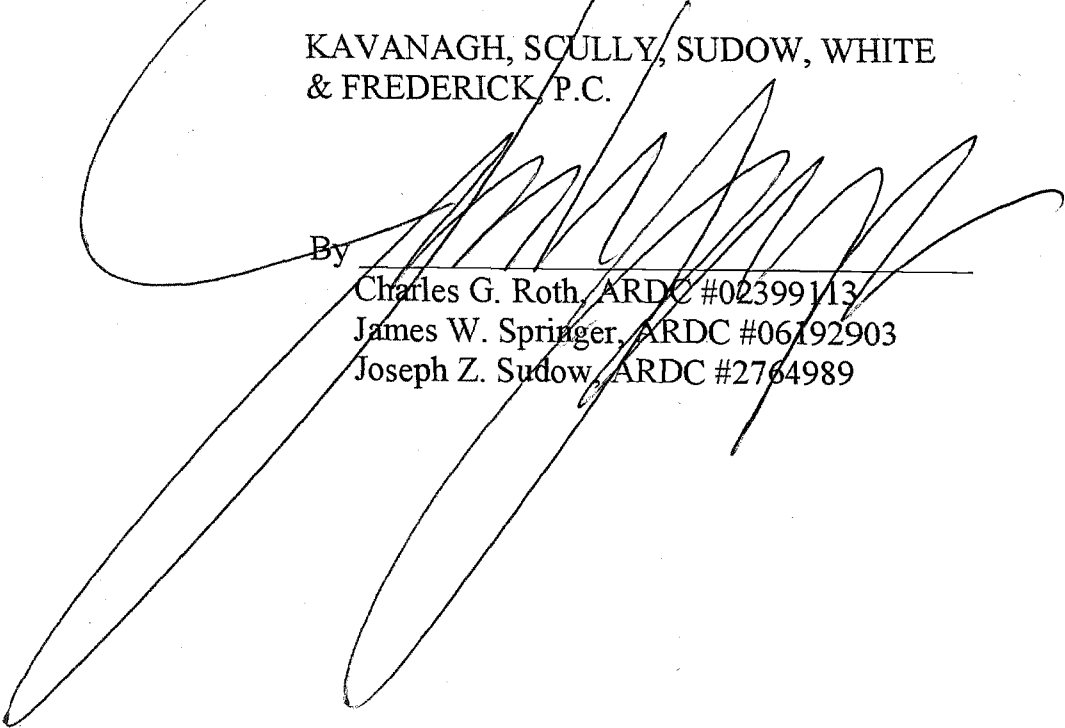
8. A copy of the proposed Amended Answer is attached hereto as Exhibit A.

WHEREFORE, Defendants pray that the Court grant them leave to file *instanter*,  
pursuant to F.R.C.P. 15, their Amended Answer to Plaintiffs' Amended Complaint.

ELLEN D. FOSTER AS EXECUTRIX,  
MELVYN R. REGAL, STEPHEN P.  
BARTLEY, MICHAEL F. NORBUTAS,  
FREDERICK J. STUBER AND ASHLEY  
ANNE FOSTER, Defendants

KAVANAGH, SCULLY, SUDOW, WHITE  
& FREDERICK, P.C.

By



Charles G. Roth, ARDC #02399113  
James W. Springer, ARDC #06192903  
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## CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served upon the following by placing the same in an envelope, postage fully prepaid, and by depositing said envelope in a U.S. Post Office Mail Box in Peoria, Illinois, or by hand delivery, on the 13<sup>th</sup> day of September, 2002, addressed as follows:

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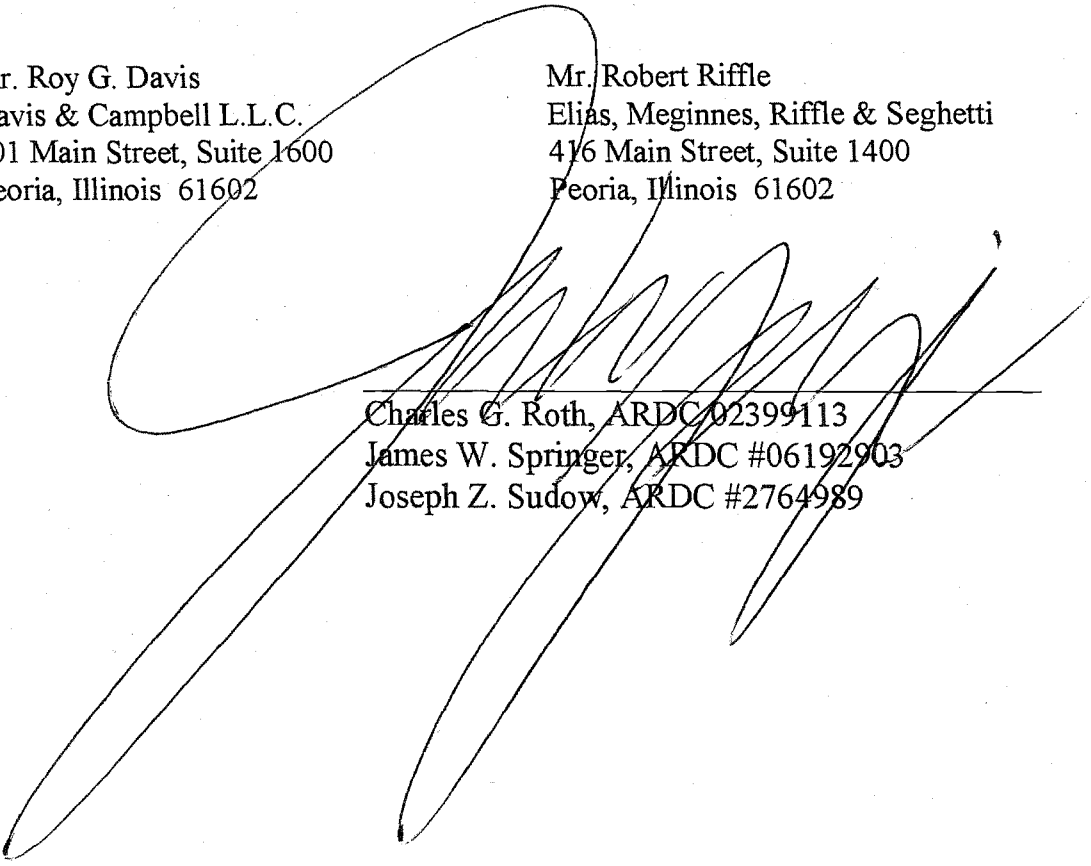
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