

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

DEBRA K. KEACH and PATRICIA A. SAGE,)
)
 Plaintiffs,)
)
 vs.) Case No. 01-1168
)
 U. S. TRUST COMPANY, NA., et al.,) ASHLEY FOSTER'S RESPONSE
) TO PLAINTIFFS' SUR-REPLY
 Defendants.)

ASHLEY FOSTER'S RESPONSE TO PLAINTIFFS' SUR-REPLY

Ashley Bradley, f/k/a Ashley Anne Foster, by her attorneys, for her Response to Plaintiffs' Sur-Reply, as permitted by Order of this Court dated 13 January 2003 states as follows:

1. This Defendant first notes that none of the four experts recently identified by the Plaintiff have identified this Defendant in any capacity in any of their reports. In that regard, they are not unlike any of the other previously disclosed experts retained by Plaintiffs. The similarity ends there.

2. Plaintiffs' allegations in their Amended Complaint have been fully described in the Briefs filed herein. Paragraph 271 of the Amended Complaint alleges she received plan assets. Paragraph 272 alleges she had knowledge of circumstances that rendered both stock transactions unlawful. This Defendant is sued according to paragraph 47 as "a party in interest as to the ESOP within the meaning of ERISA §3(14), 29 U.S.C. §1002(14)." Most significantly, Plaintiffs allege in their Complaint that the ESOP paid more than adequate consideration for the F&G stock in 1995.

3. It is the position of this Defendant that having alleged that she is a party in interest and that the ESOP paid more than adequate consideration, it was the burden of the Plaintiffs in presenting their evidence as to adequate consideration that it be presented in their case in chief and not as rebuttal testimony. Further, this Defendant has, in her Reply Brief, by citation to each expert's report and deposition demonstrated that even as rebuttal witnesses they offer no specific opinion as to the fair market value of F&G stock.

4. Plaintiffs Sur-Reply chiefly consists of excuse and explanation for the four experts. It is not sufficient to criticize another's report or suggest alternative methods of evaluation existed. That alternative evaluators would arrive at different conclusions is not Plaintiffs' burden of proof. That would be far too easy if that was all that was required. Instead, Plaintiffs' full burden is to offer proof in its case in chief that the ESOP paid more than adequate consideration. Plaintiffs have failed to do so.

WHEREFORE, this Defendant prays that this Court grant her summary judgment as to all claims and that she be dismissed from this suit.

ASHLEY FOSTER, Defendant

By her Attorneys, KAVANAGH, SCULLY,
SUDOW, WHITE & FREDERICK, P.C.

By 

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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 31 day of January, 2003, addressed as follows:

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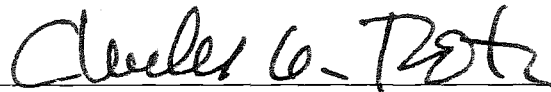
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