IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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RANDY PAUL and
WILLIAM D. CONWAY,

ORDER

Plaintiffs,

04-C-769-C

v.

MANUFACTURER'S ASSET GROUP, LLC
and RAYMOND L. LEONARD,

Defendants.

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This is a civil suit for monetary relief brought under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968 (RICO). In an order entered in this case on December 16, 2004, I directed plaintiffs to notify the court what steps they had taken to serve their complaint on the defendants. In a letter dated January 7, 2005, plaintiffs indicated that they had retained a private process server and attempted to serve defendants at two locations without success. Plaintiffs stated further that they would be making another attempt at service in the next few weeks. On January 11, 2005, the court received the following documents: (1) a copy of a summons with a date stamp from the Wisconsin Department of Financial Institutions, Division of Securities; (2) a photocopy of

a certified mail receipt indicating that a 10" x 13" envelope had been mailed to defendant Leonard at an address in Mission Viejo, California; and (3) a photocopy of Wis. Stat. § 551.65.

It is not clear whether plaintiffs may accomplish service by simply resorting to the provisions in Wis. Stat. § 551.65(2). However, I do not need to determine whether plaintiffs' compliance with the requirements of Wis. Stat. § 551.65 would constitute valid service under Fed. R. Civ. P. 4 because I have concluded that plaintiffs are barred from bringing their RICO claim by the doctrine of *res judicata*. Thus, this case must be dismissed with prejudice.

In general, "[t]he doctrine of *res judicata* (claim preclusion) requires litigants to join in a single suit all legal and remedial theories that concern a single transaction." Perkins v. Board of Trustees of the Univ. of Ill., 116 F.3d 235, 236 (7th Cir. 1997). It bars a subsequent suit if the claim upon which the suit is based arises from the "same incident, events, transaction, circumstances, or other factual nebula" as a prior suit that has gone to final judgment. Okoro v. Bohman, 164 F.3d 1059, 1062 (7th Cir. 1999). The three requirements of claim preclusion under federal law are: (1) a final judgment on the merits in an earlier action; (2) identity of parties or privies in the two suits; and (3) identity of the cause of action in the two suits. Brzostowski v. Laidlaw Waste Systems, Inc., 49 F.3d 337, 338 (7th Cir. 1995). When these elements are satisfied, the judgment in the earlier suit bars

further litigation of issues that were either raised or could have been raised therein. Kratville v. Runyon, 90 F.3d 195, 197-98 (7th Cir. 1996). Although the basic rule is that claim preclusion is an affirmative defense, 18 Charles Alan Wright et al., Federal Practice and Procedure § 4405 (1981), the Court of Appeals for the Seventh Circuit has held that a court may raise an affirmative defense on its own if it is clear from the face of the complaint that the defense applies. Gleash v. Yuswak, 308 F.3d 758, 760- 61 (7th Cir. 2002).

Plaintiffs Randy Paul and William Conway brought separate lawsuits in this court against defendants Raymond Leonard and Manufacturer's Asset Group, LLC. Paul et al. v. Leonard et al., No. 03-C-539-C; Conway v. Leonard et al., No. 03-C-535-C. This court entered final judgment in these two cases on ____________, 2005. The only question is whether those two cases involve the same cause of action as the present case. Two cases involve the same "cause of action" if they emerge from the transaction or "core of operative facts." Brzostowski, 49 F.3d at 339; Car Carriers, Inc. v. Ford Motor Co., 789 F.2d 589, 593 (7th Cir. 1986). In Nos. 03-C-539-C and 03-C-535-C, plaintiffs alleged that defendant Leonard, through his company Manufacturer's Asset Group, contacted them at various times in 2000 and 2001 and persuaded them to purchase stock in a now-inactive company named RODI Power Systems, Inc. Plaintiffs each filed suit against RODI, Leonard and Manufacturer's Asset Group, alleging violations of Wisconsin's securities laws. In the present case, plaintiffs allege in their complaint that defendant Leonard "made numerous

telephone calls . . . and also used the United States mail service to communicate" with plaintiffs beginning in July 2000 regarding the purchase of unregistered securities. These allegations indicate that plaintiffs' RICO claim arises from the same set of facts as their state securities law claims in the prior lawsuits. Therefore, all of the requirements for *res judicata* have been satisfied. This case must be dismissed with prejudice.

ORDER

IT IS ORDERED that this case is DISMISSED with prejudice. The clerk is directed to enter judgment of dismissal and close this case.

Entered this 7th day of March, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge