

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LAURENCE T. BROWNE, M.D.,	:	CIVIL ACTION
et al.,	:	
Plaintiffs	:	
	:	
v.	:	
	:	
SHERIF S. ABDELHAK, et al.,	:	
Defendants	:	NO. 98-6688

Newcomer, S.J. August , 2000

M E M O R A N D U M

Presently before this Court are various Motions to Dismiss filed by the seventeen defendants¹ in this case. For the reasons that follow, The Defendants' Motions will be granted and the Amended Complaint will be dismissed.

I. BACKGROUND

The instant case was filed as a class action suit by a number of plaintiffs and class members who allegedly "provided funds to Allegheny Health Education and Research Foundation ('AHERF') in contribution to grants or endowments to be used for specific purposes relating to research, medicine, patient care, education, lectureships, etc.," and "who were the beneficiaries or recipients of grants or endowments held by AHERF."² The

¹The Court will refer throughout this memorandum to the collective group of seventeen defendants as "The Defendants" and the collective group of five plaintiffs as "The Plaintiffs". When applicable, the Court will refer to specific parties by name or as identified in more detail below in footnotes 2 and 3.

²Specifically, the action is brought by the following named plaintiffs, on behalf of themselves and all others similarly situated: (1) Laurence T. Browne, M.D., founder and a contributor of the Vera Malisoff, M.D., '51 Lectureship endowment; (2) Variety Club of Philadelphia, which gave funds to AHERF pursuant to written contracts for the creation of The Varsity Club/Monty Hall Pediatric Unit and The Variety Heart and Lung Institute for Children; (3) Louise F. Rose, D.D.S., M.D., who agreed with AHERF that money

(continued...)

Defendants in the action are "the inner circle of officers of AHERF ('Officer Defendants'), and members of the Executive Committee of the Board of Trustees of AHERF ('Trustee Defendants'), and Mellon Bank Corp. ('Mellon')." ³

In their Amended Complaint, The Plaintiffs assert 17 claims against The Defendants, including two counts of civil

²(...continued)

would be raised to build a center for dental care in his name, to be called The Louis F. Rose Center For Dental Medicine And Oral And Maxillo-Facial Surgery; (4) Darwin J. Prockop M.D., Ph.D., who was provided a grant by the Oberkotter Foundation in order to conduct research for diabetes; and (5) Pia S. Pollack, M.D., who was provided a grant by the American Heart Association in order to conduct research relating to the regulation of cardiac function.

Plaintiffs Browne, Variety Club, and Rose will hereinafter be referred to collectively as the "Donor Plaintiffs". Plaintiffs Prockop and Pollack will be referred to collectively as the "Beneficiary Plaintiffs".

³The Officer Defendants consist of: (1) Sherif S. Abdelhak, former President and Chief Executive Officer of AHERF; (2) David W. McConnell, former Executive Vice President, Chief Financial Officer, and Treasurer of AHERF; (3) Nancy Ann Wynstra, former Executive Vice President, General Counsel, and Secretary of AHERF; (4) Dwight L. Kasperbauer, former Executive Vice President and Chief Human Resources Officer of AHERF; (5) Anthony M. Sanzo, former President and Chief Executive Officer of AHERF; and (6) Donald Kaye, M.D., former Chief Executive Officer and President of AHERF's nine hospital Philadelphia-area system and university.

The Trustee Defendants were or are members of the Executive Committee of the Board of AHERF, and include: (1) William P. Snyder, III, former Chairman of the Board of Trustees of AHERF, serving as Chairman of its Executive Committee and Compensation Committee; (2) Douglas D. Danforth, who was Vice Chairman of the Board and member of the AHERF Executive Committee; (3) J. David Barnes, who served as a member of the Executive Committee and the Compensation Committee of the AHERF, and served as Chairman of both the Audit Committee and the Finance Committee of AHERF, while simultaneously serving on the Board of Directors of defendant Mellon, as Chairman Emeritus; (4) Frank V. Cahouet, who was a member of the Board of AHERF's Trustees serving on the Executive Committee while simultaneously serving as Chairman of the Board, President, and Chief Executive Officer of defendant Mellon; (5) Ira J. Gumberg, who was a member of the Board of Trustees of AHERF, serving on the Executive Committee, while simultaneously serving on the Board of Directors of Mellon; (6) Harry J. Edelman, III, who was an AHERF Trustee and a member of the Executive Committee of AHERF and is Chairman of the Board of Allegheny University Hospitals; (7) Robert L. Fletcher who was a member of the Executive Committee of AHERF; (8) Francis B. Nimick, who was an AHERF Trustee and member of the Executive Committee; (9) Thomas O'Brien, who was an AHERF Trustee and member of the Executive Committee and is Chairman and CEO of PNC Bank Corp.; and (10) Robert B. Palmer, who was an AHERF Trustee and member of the Executive Committee.

Defendant Mellon is a multi-bank holding company with subsidiaries which perform commercial banking operations, mortgage banking services, and trust services.

violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO") and 15 counts of various pendant state law claims. Essentially, The Plaintiffs allege that The Defendants wrongfully seized and misappropriated their restricted endowment funds and grants held in AHERF's custody. According to The Plaintiffs' Amended Complaint, AHERF is a now bankrupt non-profit charitable foundation which operated as a health system, providing hospital management to system members. AHERF owned and operated hospitals, physician practices, and medical schools. In the late 1980s AHERF expanded with the acquisition of two medical schools, the Medical College of Pennsylvania and Hahnemann University, and their related hospitals. AHERF later acquired several community hospitals and the St. Christopher Hospital for Children.

The Plaintiffs aver that in the midst of the financial strain that resulted from AHERF's overexpansion, The Defendants raided and used millions of dollars from various endowments and accounts for "unauthorized purposes, including awarding themselves exorbitant pay raises, bonuses, and other compensations; repaying a [\$89 million] loan to defendant Mellon; and for other business purposes of AHERF." In addition, The Defendants' alleged misuse of The Plaintiffs' funds was "part of a larger fraudulent scheme by The Defendants to keep AHERF afloat for as long as possible so that The Defendants could continue to loot AHERF as well as plaintiffs' funds in order to enrich themselves."

On July 21, 1998, AHERF filed for bankruptcy court protection from creditors who were owed an estimated \$1.3 billion. The Plaintiffs then filed the instant action, to which The Defendants have now responded with their Motions to Dismiss.

II. STANDARD FOR MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 12(b)(6), a court should dismiss a claim for failure to state a cause of action only if it appears to a certainty that no relief could be granted under any set of facts which could be proved. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). Because granting such a motion results in a determination on the merits at such an early stage of a plaintiff's case, the district court "must take all the well pleaded allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 664-65 (3d Cir. 1988) (quoting Estate of Bailey by Oare v. County of York, 768 F.2d 503, 506 (3d Cir. 1985)).

III. DISCUSSION

A. STANDING FOR RICO

The Defendants' first challenge The Plaintiffs' standing to bring this suit under RICO. In order to have standing to bring a RICO claim, the plaintiff must have been injured in his business or property, see 18 U.S.C. § 1962, and that injury must have been proximately caused by the alleged RICO

pattern. Holmes v. Securities Investor Protection Corp., 503
U.S. 258, 268-70 (1992).

1. BUSINESS OR PROPERTY INTEREST

The Defendants argue that none of The Plaintiffs have alleged a property interest that would grant standing to bring the instant suit.

a. "DONOR PLAINTIFFS"

To have been injured in his business or property, a plaintiff must have a property interest. Despite the dearth of caselaw on the subject, it has been held that a property interest is created in a donation when a right of reverter, right to modify, or right to redirect is retained by the donor. See Carl J. Herzog Foundation v. University of Bridgeport, 699 A.2d 995, 999 n.5 (Conn. 1997). Furthermore, the issue of "[w]hether in any given case the settlor has expressed an intent to give a determinable interest only and to reserve a possibility of reverter, is a question of fact which requires close scrutiny of the instrument and surrounding circumstances." George G. Bogert and George T. Bogert, The Law of Trusts and Trustees, § 419 (2d ed. 1991). However, "[c]ourts require clear proof and will not imply such a limitation on the estate granted or such reservation of possibility of reverter." Id.

Pennsylvania courts have joined in not recognizing an implied possibility of reverter. It has been concluded that "[w]here there is a conveyance to a corporate grantee, the addition of the words, 'for no other use or purpose whatsoever', is not of itself sufficient to create a base fee where the purpose expressed in the limitation and in the corporate charter

are similar." Abel v. Girard Trust Co. et al. 73 A.2d 682, 684 (Pa. Super 1950). Moreover, "[i]n the absence of other evidence a transfer of property 'upon condition' that it be applied for a charitable purpose indicates an intention to create a charitable trust rather than an intention to make a transfer upon condition." Restatement (Second) of Trusts § 351, cmt. e (1957).

In the instant action, the Amended Complaint avers that when The Plaintiffs established, or contributed to the endowments or grants held by AHERF,

the Officer and Trustee Defendants agreed and/or caused AHERF to represent to and agree with plaintiffs and Class members that the endowment and grant funds would be restricted, that is, AHERF and the Officer and Trustee Defendants could only use the funds for the purposes designated by plaintiffs and the Class, and not for any other purposes.

In light of the law set forth above, the Court finds that the Amended Complaint's general allegations concerning The Plaintiffs' endowment agreements' language, restricting AHERF's use of the endowment or grant funds, are not sufficient to show that The Plaintiffs retained any rights of reverter, rights to modify, or rights to redirect (hereinafter, the collective rights shall be referred to as "Rights of Reverter").

Laurence T. Browne:

In discussing the creation of the endowment for the Vera Malisoff Lectureship, the Amended Complaint states that "Plaintiff Browne was to have continued involvement and control over the use of the funds." Plaintiff Browne and his children were even "to be actively involved in organizing the Lectureship,

such as selecting a lecturer, inviting students, arranging the dinner, etc." In addition, it was agreed that "the funds which were contributed to this Lectureship would only be used for the Lectureship." Finally, Plaintiff Browne alleges that if he "had been aware that [The Defendants were using his endowment funds for unauthorized purposes], he would have stopped soliciting contributions, discontinued the endowment, and immediately withdrawn the money that was placed in the endowment."

Despite these allegations that Plaintiff Browne and his children were to exercise control and involvement with the use of the endowment funds, the Court finds that there are simply no allegations that Plaintiff Browne or his children retained any Rights of Reverter or had the power under their endowment agreement to discontinue the endowment and withdraw the money. Neither the restrictive language, "only", nor the agreement to exercise control and involvement with the use of the funds creates a property interest in the endowment funds.

Variety Club of Philadelphia :

The Amended Complaint's description of the 1982 agreement between Variety Club and Hahnemann Medical College & Hospital asserts no facts which, even if true, would indicate that Plaintiff Variety Club retained any Rights of Reverter. The closest assertion that Variety Club makes is the bare allegation that "Plaintiff Variety Club would have immediately demanded the return of its money." Such an allegation, however, does not sufficiently show that Plaintiff Variety Club's agreement

retained sufficient rights that would allow it to re-obtain any endowment funds.

Plaintiff Variety Club's 1976 agreement with Hahnemann included Variety Club's right to "designate two of its own members to the Board of Governors of the William Likoff Cardiovascular Institute." However, the Amended Complaint offers no information regarding the actual language of the agreement, and whether it contained any words of condition or the retention of any rights. Again, the Court concludes that The Plaintiffs have not made any allegations that the 1976 Variety Club Agreement retained any Rights of Reverter to withdraw or regain any endowment funds.

Louise F. Rose⁴:

The Plaintiffs allege that had Plaintiff Rose been aware that the funds he raised were being used for unauthorized purposes, "he would have stopped soliciting more funds from contributors, and he would have demanded that the money be returned." This is not a sufficient allegation that Plaintiff Rose had any property rights in the endowment funds or would have been successful in his attempt to regain the money. The Court finds that the Amended Complaint makes no allegation that Plaintiff Rose retained any Rights of Reverter in his agreement with AHERF.

⁴The AHERF Trustee Defendants refer to plaintiff Rose as the Fundraiser Plaintiff because the Amended Complaint does not allege that he, himself, ever contributed any monies to an endowment fund. However, for the purposes of this Memorandum, the Court will refer Rose a Donor Plaintiff, unless specific reference is made to his status as a fundraiser only.

The Court determines that the Amended Complaint has alleged no facts which would support a conclusion that the Donor Plaintiffs retained any rights of reverter, rights to modify, or rights to redirect in their endowment agreements. Therefore, the Donor Plaintiffs have failed to allege any property interest in the endowment funds. Without sufficient allegations of a property interest in the donated funds, the donor plaintiffs have failed to establish any standing under RICO to sue The Defendants in the instant action because they have failed to allege any injury to a business or property interest.⁵ Accordingly, Defendants' Motion to Dismiss on the grounds of the Donor Plaintiffs' failure to show any property interest in the endowment funds will be granted and the Donor Plaintiff's federal RICO claims will be dismissed.

b. BENEFICIARY PLAINTIFFS

Both Drs. Prockop and Pollack are researchers who were designated as named recipients of funds which were provided to them pursuant to written grant contracts for their specific use in carrying out medical research, teaching, etc. The Amended Complaint alleges that both researchers had research grant monies

⁵The Court notes that its findings are limited to the issue of whether the Donor Plaintiffs sufficiently alleged in the Amended Complaint that they retained in their endowment agreements any rights of reverter, rights to modify, or rights to redirect. Finding that they have not so alleged, the Court has concluded that the Donor Plaintiffs have not sufficiently pleaded that they had any property interests in the endowment funds to pursue a federal RICO claim. The Court has not made any findings regarding the Donor Plaintiffs' standing to enforce the endowment agreements or to obtain any other forms of equitable or legal relief.

transferred to AHERF for the purposes of furthering their research for which they received the grant money.

The Defendants contend that the Beneficiary Plaintiffs cannot allege injury to their business or property because: (1) they donated none of the money themselves and, thus, never had any property interest in it; and (2) they were simply instruments through which the AHERF research mission would be carried out, so the true beneficiaries of the donations were members of the public consisting of those patients and disease sufferers who stood to benefit from the research.

The Plaintiffs rely on In re Francis Edward McGillick Foundation, 642 A.2d 467, 469 (Pa. 1994) to argue that the beneficiaries of a charitable trust clearly have "standing to enforce the trust." The Plaintiffs also cite the Pennsylvania Supreme Court in Commonwealth v. Stewart, 12 A.2d 444 (Pa. 1940), aff'd, 312 U.S. 649 (1941), which noted that the modern trend (in 1940) was to understand that "in addition to rights against the trustee, the beneficiary also has rights in rem, an actual property interest in the subject-matter of the trust, an equitable ownership of the trust res." Id. at 446-47. The Plaintiffs further quote Stewart to posit that beneficiaries to a trust have an actual property interest in the funds. The Court noted that the beneficiary in that case had standing "to enforce the trust, to have a breach of trust enjoined and to obtain redress in case of breach." Stewart, 12 A.2d at 447 (quoting the Supreme Court in Blair v. Commissioner of Internal Revenue, 300

U.S. 5, 13 (1937) regarding the facts in that case). The Plaintiffs, however, mischaracterize the holding in Blair by failing to quote the Court's very next sentence, which qualifies the interest at issue in Blair: "The interest was present property alienable like any other, in the absence of a valid restraint upon alienation." Id.

Although the Beneficiary Plaintiffs' standing to enforce the trusts is not really contested, their standing as to whether they may recover damages is disputed. The Restatement (Second) of Trusts states that "[t]he remedies for the failure of the trustees of a charitable trust to perform their duties under the trust are exclusively equitable." Restatement (Second) of Trusts § 392 (1957). However, "[i]f the trustee is under a duty to pay money immediately and unconditionally to the beneficiary, the beneficiary can maintain an action at law against the trustee to enforce payment." Id. § 198(1). This idea was adopted in Pennsylvania by Ramsey v. Ramsey, 351 Pa. 413, 418, 41 A.2d 559, 562 (1945).

In the instant case, the Amended Complaint sufficiently pleads that AHERF was holding grant money for the Beneficiary Plaintiffs in charitable trust for the purposes of funding their research. In addition, the allegations sufficiently show that AHERF had a duty to pay the Beneficiary Plaintiffs from the funds. However, AHERF's duty to pay was not unconditional; rather, it was restricted to the particular uses for which the money was granted. While the Beneficiary Plaintiffs clearly had

an interest in the funds, their interest was limited to the conditions and restrictions set forth by the grants and was not alienable without valid restraint upon alienation. Therefore, this Court finds that the Beneficiary Plaintiffs did not have a property interest in those restricted grants funds for which they now seek to recover unrestricted, and possibly treble, damages. Accordingly, the Court concludes that the Beneficiary Plaintiffs do not have standing in the instant case to bring any RICO claims and The Defendants' Motions to Dismiss will be granted.

2. PROXIMATE CAUSE

Although the Court concludes that The Plaintiffs' RICO claims should be dismissed as to all The Plaintiffs for their failure to allege a property interest, it will also address the second argument raised by The Defendants regarding The Plaintiffs' standing. In order to have RICO standing, a plaintiff must allege facts sufficient to establish that the RICO pattern complained of is the proximate cause of one's injury. Holmes v. Securities Investor Protection Corp., 503 U.S. 258, 268-70 (1992). A plaintiff fails to satisfy RICO standing requirements if his injury merely flows from that incurred by a third party. Id. at 271. The Holmes Court found that it was unlikely that Congress intended an expansive reading of RICO. Id. Therefore, "but for" causation is not enough to confer standing under RICO. See In re Phar-Mor, Inc. Securities Litigation, 900 F.Supp. 777, 781-83 (W.D. Pa. 1994) (plaintiff's injury caused by fraud considered derivative when fraud was not

directed towards plaintiffs and damages sustained were incidental to the injuries suffered by the corporation).

The Court in Holmes identified three key factors to consider in determining whether a RICO claim is based on an injury too remote from the alleged racketeering activity. First, the less direct an injury is, the more difficult it becomes to ascertain the amount of a plaintiff's damages attributable to the violation, as distinct from other, independent, factors. Holmes, 503 U.S. at 269-270. Second, distinct from the problems of proving factual causation, recognizing claims of the indirectly injured would force courts to adopt complicated rules apportioning damages among plaintiffs removed at different levels of injury from the violative acts, to obviate the risk of multiple recoveries. Id. Third, the need to grapple with these problems is simply unjustified by the general interest in deterring injurious conduct, since directly injured victims can generally be counted on to vindicate the law as private attorneys general, without any of the problems attendant upon suits by plaintiffs injured more remotely.

a. DONOR PLAINTIFFS

Even assuming arguendo that each of the Donor Plaintiffs had a property interest in the allegedly raided endowment funds, the Court finds that they would still lack standing to bring their RICO claims because, based on the factors set forth by the Supreme Court in Holmes v. Securities Investor

Protection Corp., 503 U.S. 258 (1992), their injuries are too remote from The Defendants' alleged racketeering activity.

In considering the first Holmes factor, "[t]he more difficult it is to distinguish between the effect of the defendants' legitimate activities and their alleged racketeering actions on the plaintiffs, the more likely [the Court is] to conclude that proximate causation is lacking," Callahan v. AEV, Inc. 182 F.3d 237, 263 (3d Cir. 1999). Here, however, it is readily ascertainable which of the Donor Plaintiff's injuries were attributable to The Defendants' alleged RICO violations. Each endowment donor or founder claims losses to the specific funds to which he contributed, which can be traced fairly easily by distinguishing between The Defendants' authorized and unauthorized uses of the funds. Therefore, the Court finds that the Donor Plaintiffs satisfy the first factor.

The second Holmes factor reveals the very real possibility in this case that the Court would have to adopt complicated rules apportioning damages among the various Plaintiffs to satisfy multiple recoveries, and so the Donor Plaintiffs fail to meet the second factor. The funds in the instant case are being sought by both donor and beneficiary plaintiffs. Although The Plaintiffs in this case only represent donors or beneficiaries to specific funds, in general, for each donor there is at least one corresponding beneficiary, and conversely, for each beneficiary there is at least one corresponding donor. If both donors and beneficiaries were

allowed to sue, the Court would have to consider allocating resulting damages between the two types of plaintiffs, even though the controversy would not have occurred between the plaintiffs. Furthermore, the allocation of damages is made even more complicated in light of the fact that the Court must also consider that AHERF (or Tenet Healthsystem who purchased AHERF), the Commonwealth, the U.S. Securities and Exchange Commission, as well as foundations such as The American Heart Association and the Oberkotter Foundation (collectively referred to hereinafter as "Potential Plaintiffs") already seek, or in the future may seek, damages from the same alleged activities.

In reviewing the third Holmes factor, the Third Circuit found that the "Court's primary concern in Holmes was to ensure that some plaintiff be available to vindicate the law's 'general interest in deterring injurious conduct'" and a "civil RICO action is not specifically required to vindicate this general deterrence interest." Callahan v. A.E.V., Inc., 182 F.3d 237, 266-67 (3d Cir. 1999) (quoting Holmes, 503 U.S. at 269). It is clear in the case of the Donor Plaintiffs that their interests are contingent upon and derivative of the Beneficiary Plaintiffs' claims (or at least the claims of the beneficiaries of the funds to which the Donor Plaintiffs contributed). To the extent those beneficiaries are injured, so are the Donor Plaintiffs in that the beneficiaries of the funds are the only ones who can realize the purposes for which the Donor Plaintiffs contributed the funds in the first place. Along the same lines, making the beneficiary

plaintiffs whole, i.e. restoring the funds and enabling them to utilize the money as originally planned, would make the Donor Plaintiffs whole. Therefore, the beneficiary plaintiffs' injuries are more direct than those of the Donor Plaintiffs and the beneficiaries' claims serve to vindicate the law's general interest in deterring the injurious conduct better than those of the Donor Plaintiffs. In addition, the Potential Plaintiffs again arguably have claims of more direct injuries that would serve to vindicate the law and deter the injurious conduct at issue here.

Therefore, the Court finds that the Donor Plaintiffs' injuries are too remote to confer them standing in the instant suit when there are beneficiaries who may have more direct claims to the lost funds.

b. BENEFICIARY PLAINTIFFS

Assuming arguendo that the Beneficiary Plaintiffs had adequately alleged a property interest, the Court finds that they have alleged sufficient direct injury to confer them standing to sue under RICO. As noted above, it is this Court's opinion that the Beneficiary Plaintiffs clearly had an interest in the funds at the time of the alleged raids.

Considering the first of the Holmes factors, the Court finds that the Beneficiary Plaintiffs' alleged injuries are easily ascertainable - the researchers were owed certain specified sums of money for their research and work under the grants. As for the second factor, although the Court has already

admitted that apportioning damages would be difficult with both Donor and Beneficiary Plaintiffs, the Donor Plaintiffs' injuries have been found to be too remote to confer them standing under RICO. Therefore, the third Holmes factor is determinative as to whether the Beneficiary Plaintiffs' injuries were direct in this case.

The Court concludes that no one stood to gain more from the endowment funds (or lose more from the loss of the endowment funds) than the Beneficiary Plaintiffs. The Beneficiary Plaintiffs had an interest in the raided funds that was related to supporting their livelihood, i.e. the funds were to pay for their research. Even those members of the public, e.g. diabetes and heart disease sufferers, that The Defendants argue are the most direct potential plaintiffs, would only have benefitted to the extent that the researchers (i.e. Beneficiary Plaintiffs) were successful and productive in utilizing the endowment funds. Like the Donor Plaintiffs, the members of the public had interests (and corresponding injuries) that were only contingent upon the Beneficiary Plaintiffs receiving their grant funds.

Despite the other Potential Plaintiffs and possible arguments that they were injured more directly than the Beneficiary Plaintiffs, the Court concludes that it is not the function of the proximate cause hurdle to determine the most directly injured plaintiff, but rather to confer standing to those plaintiffs who have in fact been injured directly. The consideration of plaintiffs with more direct injuries is merely

one of the three factors set forth by the Supreme Court in Holmes; it is not necessarily determinative.

Therefore, the Court finds that the Beneficiary Plaintiffs satisfy the proximate cause analysis of RICO standing by sufficiently pleading injuries that were directly caused by The Defendants' alleged racketeering activities.

B. FAILURE TO STATE A RICO CLAIM

Despite having already ruled that all The Plaintiffs' lack standing to bring a RICO claim in this case, the Court will now address The Defendants' arguments challenging the RICO claims themselves. The Court finds that the RICO claims can be dismissed for The Plaintiffs' failure to plead those claims adequately.

The Plaintiffs' two federal claims allege: (1) that The Defendants acquired or maintained control of an enterprise through racketeering in violation of the RICO statute, 18 U.S.C. § 1962(b); and (2) that The Defendants conducted an enterprise through a pattern of racketeering in violation of the RICO statute, 18 U.S.C. § 1962(c). The Defendants argue a variety of reasons why The Plaintiffs have failed to allege sufficient claims for RICO violations, including, inter alia: (1) The Plaintiffs' failure to plead with adequate particularity under Federal Rule of Civil Procedure 9(b); and (2) The Plaintiffs' failure to plead any pattern of racketeering or predicate acts of money laundering.

1. **PLEADING WITH PARTICULARITY: FEDERAL RULE OF CIVIL PROCEDURE 9(b)**

Federal Rule of Civil Procedure 9(b) requires that "all averments of fraud or . . . circumstances constituting fraud . . . shall be stated with particularity." This pleading requirement is applicable to RICO actions claiming fraud as the racketeering activity. See Saporito v. Combustion Engineering, Inc., 843 F.2d 666, 673 (3d Cir. 1988). Here, The Plaintiffs allege that the predicate acts were money laundering, as set forth in 18 U.S.C. § 1956(a)(1)(B), and that the unlawful activities related to that money laundering constituted bankruptcy fraud under 18 U.S.C. § 152(7). Since these activities all contain elements of fraud, Rule 9(b) applies to The Plaintiffs' averments of RICO violations in the instant case.

The purposes of Rule 9(b) are to provide notice of the precise misconduct with which defendants are charged and to "safeguard defendants against spurious charges of immoral and fraudulent behavior." Seville Indus. Mach. v. Southmost Mach., 742 F.2d 786, 791 (3d Cir. 1984); See Rolo v. City Investing Co., 155 F.3d 644, 658 (3d Cir. 1998) (citations omitted). While allegations of time, place, and date certainly meet this requirement, see Rolo, 155 F.3d at 658, allegations that set forth the details of the alleged fraud may also meet these requirements, and plaintiffs "are free to use alternative means of injecting precision and some measure of substantiation into their allegations of fraud." Seville, 742 F.2d 791 (finding that

plaintiff had met burden when it incorporated into the complaint a list of the pieces of machinery allegedly subject to fraud and otherwise described the "nature and subject" of the supposed misrepresentations); Saporito, 843 F.2d at 675 (3d Cir. 1988), judgment vac'd on other grounds, 489 U.S. 1049, 109 (1989) (stating that plaintiff did not meet burden when it pled in very general terms, and did not allege who made or received fraudulent statements).

"As long as the allegations of fraud reflect precision and some measure of substantiation, the complaint is adequate." Meridian, 772 F.Supp. at 229 (citing Seville, 742 F.2d at 791). However, because the allegations should adequately notify defendants of the misconduct alleged, a plaintiff's averment must include sufficient particularity to identify who made the representations. Saporito, 843 F.2d at 675.

2. SECTION 1962(b)

Count I of The Plaintiffs' Amended Complaint alleges that all The Defendants violated 18 U.S.C. § 1962(b), which provides that:

It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

Under § 1962(b), a plaintiff must show that he suffered an injury from a defendant's acquisition or control of an interest in the

RICO enterprise, and that the defendant must have acquired the control as a result of the racketeering activity.

a. ENTERPRISE

The threshold element of RICO requires that The Plaintiffs plead the existence of an enterprise (affecting interstate commerce), comprised of a group of persons or entities associated together, formally or informally, for the purpose of engaging in a course of conduct. An enterprise is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit. United States v. Turkette, 452 U.S. 576, 583 (1981).

In this case, The Plaintiffs have pleaded that AHERF constituted an enterprise that affected interstate commerce and that The Defendants controlled and operated AHERF as a controlling unit in order to raid the endowment funds at issue here. At this juncture of the action, the Court is satisfied that The Plaintiffs have sufficiently alleged enough information for The Defendants to understand which enterprise was used to conduct the alleged racketeering activity.

b. CONTROL OF AN ENTERPRISE

Turning to the specific elements of a § 1962(b) claim, "control" of an enterprise has been held to mean "more than simply being a manager or a corporate officer. In common parlance, control connotes domination. It signifies the kind of power that an owner of 51% or more of an entity would normally enjoy." Kaiser v. Stewart, CIV.A. No. 96-6643, 1997 WL 476455,

at *2 (E.D. Pa. Aug. 19, 1997). It has also been noted that while the control need not be formal such as through ownership of a majority of corporate stock, it still must be similar to "that type of influence over the operation or management of an enterprise." Id. (quoting T.I. Constr. Co., Inc. v. Kiewit Eastern Co., CIV.A. No. 91-2638, 1992 WL 195425, at *6 (E.D. Pa. Aug. 5, 1992)).

After reviewing the Amended Complaint, the Court finds that The Plaintiffs have not sufficiently pleaded with particularity that Trustee Defendants Snyder, Danforth, Edelman, Fletcher, Nimick, O'Brien, and Palmer had control in the alleged enterprise to maintain the present RICO action against them. Not only are there no allegations that they acquired or maintained a requisite level of "control" over AHERF, there are no allegations made against them individually at all in the Amended Complaint. Each of the aforementioned Trustee Defendants are mentioned by name only once throughout the 70 page Amended Complaint - and only to identify them with their respective positions as AHERF Trustees. As noted above, control of an enterprise means more than simply being a manager or a corporate officer, and in this case, a trustee. Accordingly, The Plaintiffs' RICO claims under § 1962(b) will be dismissed as to the aforementioned 7 Trustee Defendants.

The Court also finds that the Amended Complaint insufficiently pleads the control element of The Plaintiffs' § 1962(b) claim as to Officer Defendants Wynstra, Kasperbauer,

Sanzo, and Kaye. Despite their respective positions as various officers of AHERF, the closest allegations in the Amended Complaint that these four defendants acquired or maintained control in an enterprise are that they received large bonuses, salary increases, and monetary payments from AHERF's stock option plan, and as to Defendant Kaye, that he was privy to a February 11, 1998 memo whereby Defendant Abdelhak directed his top aides to borrow from the endowment funds. Essentially, The Plaintiffs rely on nothing more than the four defendants' positions as officers to build their § 1962(b) claim against them. The Court finds that The Plaintiffs have failed to plead with any specificity that the defendants had any control over AHERF that would indicate influence or domination over AHERF's operation or management as an enterprise. The Plaintiffs have failed to provide notice to the defendants of the precise misconduct with which they are charged. Therefore, The Plaintiffs' RICO claims under § 1962(b) will be dismissed as to these four Officer Defendants as well.

Officer Defendant McConnell was allegedly directed by Defendant Abdelhak at various times to shift and use money from the endowment funds for unauthorized purposes. While the allegations show that Defendant McConnell had knowledge of, and actually participated in, the ongoing enterprise and the raiding of endowment funds, there is no allegation that he had any control over the enterprise to rise to the level of power that an "owner of 51% or more of an entity would normally enjoy."

According to the Amended Complaint, Defendant McConnell only acted upon the direction of Defendant Abdelhak; and while the Court does not find that this absolves him of any wrongdoing, it does find that such allegations are insufficient to show that he had acquired or maintained the requisite level of control over the enterprise to maintain a § 1962(b) claim against him.

However, the Court does find that The Plaintiffs have adequately pled that Trustee Defendants Barnes, Cahouet, Gumberg, as well as Officer Defendant Abdelhak and Defendant Mellon acquired or maintained control over AHERF. In several different places, the Amended Complaint alleges that Defendants Barnes, Cahouet, and Gumberg, acting simultaneously as AHERF trustees and Mellon officers or directors, may have had influence over the \$89 million loan repaid to Mellon Bank with allegedly raided endowment funds. As for Defendant Abdelhak, according to the Amended Complaint, he was clearly the most influential in acquiring or maintaining control over AHERF as an enterprise. Among the many allegations made against Abdelhak are, inter alia, that at numerous times he directed his top aides to borrow from various endowment funds for unauthorized uses, and that he directed how certain expenses would be recorded. The Court concludes that the Amended Complaint sufficiently pleads with particularity that Defendants Abdelhak, Barnes, Cahouet, and Gumberg acquired or maintained control over the alleged enterprise for the purposes of The Plaintiffs' § 1962(b) claim in this case. The Court also finds that the allegations at this

junction of the action against Defendants Barnes, Cahouet, and Gumberg, as employees of Mellon, sufficiently implicate Defendant Mellon's potential control of the alleged enterprise.

c. INTEREST IN AN ENTERPRISE

Section § 1962(b) also precludes the acquisition or maintenance of "any interest" in an enterprise through racketeering activity. "Interest" in that context has been defined as a "proprietary one." Kaiser, 1997 WL 476455, at *3 (citations omitted). Furthermore, while the purchase of stock has been cited as an example of a proprietary interest, the Second Circuit has used a broader definition, stating that an interest "encompasses all property rights and is understood to refer to a right, claim, title or legal share in the enterprise." Id. at 3 (quoting Welch Foods, Inc. v. Gilchrest, CIV.A. No. 93-0641E(F), 1996 WL 607059, at *7 (W.D.N.Y. Oct. 18, 1996)). Regardless of the precise definition of control or interest, however, "[m]ere participation in an enterprise does not plead a violation of subsection 1962(b)." Welch, 1996 WL 607059, at *7.

The Court finds that the Amended Complaint makes no allegations that any of The Defendants gained any interest in an enterprise that amounted to a proprietary interest, right, claim, title, or legal share for the purposes of § 1962(b).

d. SPECIFIC NEXUS

Finally, under § 1962(b), after specifying a defendant's interest in or control of an enterprise, plaintiff must allege a specific nexus between the interest in or control

of the enterprise and the alleged racketeering activity. See Lightning Lube, Inc. v. Witco Corp., 4 F.3d 1153, 1190-91 (3d Cir. 1993); Kehr Packages, Inc., 926 F.2d 1406, 1411 (3d Cir. 1991). Also "[i]t is not enough for the plaintiff merely to show that a person engaged in racketeering has an otherwise legitimate interest in an enterprise." Lightning Lube, 4 F.3d at 1191. The plaintiff additionally needs to allege an acquisition injury - that is, injury resulting from a defendant's acquisition of any interest in or control of a RICO enterprise "independent from that caused by the pattern of racketeering." Kaiser, 1997 WL 476455, *3; Lightning Lube, 4 F.3d at 1191. Therefore, under § 1962(b), the enterprise typically is the victim of the racketeering activity. Kehr Packages, 926 F.2d at 1411.

Here, the Court finds that The Plaintiffs have sufficiently alleged a specific nexus between Defendants Barnes, Cahouet, Gumberg, Abdelhak, and Mellon's alleged control of the enterprise and the alleged money laundering that took place at AHERF. The Amended Complaint is clear that any alleged money laundering and raiding of endowment funds that took place at AHERF was connected to, and made possible by, defendants' control of the alleged enterprise.

However, the Court determines that The Plaintiffs have not sufficiently alleged in their Amended Complaint that they suffered any injuries, resulting from the defendants' acquisition of control of AHERF, independent from those caused by the pattern of racketeering. The injuries suffered by The Plaintiffs all

relate to losses to the endowment funds - either in the failure to see the purposes of the endowments realized, or the loss of use of the endowment or grant funds. Furthermore, the Court finds that all of The Plaintiffs' injuries can be attributed to the alleged money laundering or bankruptcy fraud. To the extent that all of The Plaintiffs' injuries can be attributed to the alleged pattern of racketeering, the Court cannot identify any injuries suffered by Plaintiffs independent of those caused by the alleged money laundering based on bankruptcy fraud.

The Plaintiffs have only alleged injuries caused by the alleged pattern of racketeering activity, which fails to state a sufficient claim under 18 U.S.C. § 1962(c). See S&W Contracting Services, Inc. v. Philadelphia Housing Authority, et al., CIV.A. No. 96-6513, 1998 WL 151015, at *7 (E.D. Pa. Mar. 25, 1998). A distinct injury must be alleged under § 1962(b), and The Plaintiffs have not done so. See id. Therefore, The Plaintiffs' allegations fail to plead any acquisition injuries and are insufficient to bring a § 1962(b) claim against Defendants Barnes, Cahouet, Gumberg, Abdelhak, and Mellon. Accordingly, The Defendants' Motions to Dismiss will be granted with respect to the § 1962(b) violation and said claim will be dismissed as to all The Defendants.

3. SECTION 1962(c)

Count II of the Amended Complaint alleges that all The Defendants violated 18 U.S.C. § 1962(c), which provides that:

It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

In order to make out a § 1962(c) RICO claim, a plaintiff must allege: (1) the existence of an enterprise affecting interstate commerce⁶; (2) that the defendant was employed by or associated with the enterprise; (3) that the defendant participated, either directly or indirectly, in the conduct or the affairs of the enterprise; and (4) that the defendant participated through a pattern of racketeering activity that must include the allegation of at least two racketeering acts. See Annulli v. Panikkar, 200 F.3d 189 (3d Cir. 1999).

a. DEFENDANTS MUST HAVE BEEN EMPLOYED BY OR ASSOCIATED WITH THE ENTERPRISE

In considering the second element of RICO, the threshold showing of "association" is not difficult to establish: it is satisfied by proof that the defendant was aware of at least the general existence of the enterprise. U.S. v. Parise, Jr., 159 F.3d 790, 796 (3d Cir. 1998). That is, a defendant must be

⁶The Plaintiffs have sufficiently pleaded the first element - the existence of an enterprise - as outlined by this Court above in Section II.B.2.a. of this Memorandum.

aware of the general nature of the enterprise and know that the enterprise extends beyond his individual role. Id.

Here, the Amended Complaint sufficiently sets forth allegations that all The Defendants were aware of the general existence of the enterprise. The Officer Defendants were all involved in some management role at AHERF and, by virtue of their positions, had contemporaneous knowledge of the material facts about AHERF and directed and controlled AHERF. With respect to the Trustee Defendants, The Plaintiffs allege, inter alia, that each of the Trustee Defendants was or is a member of key committees within AHERF and "had the opportunity and influence to direct and control the management and operations of AHERF" because they had "contemporaneous knowledge of all material facts concerning AHERF, including its financial condition, and they directed or controlled AHERF. Defendant Mellon allegedly loaned money to AHERF and was influential in the inappropriate repayment of that loan. Therefore, the Amended Complaint adequately pleads the association element of The Plaintiffs' § 1962(c) claim as to all The Defendants.

b. DEFENDANT MUST HAVE PARTICIPATED IN THE CONDUCT OR AFFAIRS OF THE ENTERPRISE

To satisfy the third element of RICO, The Plaintiffs must also allege that The Defendants participated directly or indirectly in the conduct or affairs of the enterprise. The Supreme Court in Reves v. Ernst & Young, 507 U.S. 170 (1993), held that the term "conduct" requires some degree of direction,

while the term "participate" requires some part in that direction. Id. at 178. Thus, the Supreme Court clarified the prerequisite to liability under § 1962(c) as requiring that the defendant participate in the operation or management of the enterprise itself. Reves v. Ernst & Young, 507 U.S. 170, 183 (1993). The Court further noted that the operation and control could extend beyond the upper levels of management to anyone who exerts control over its affairs. Id. Moreover, liability under § 1962(c) is not limited to those with primary responsibility for the enterprise's affairs, and while defendants must have participated in the enterprise's affairs, the level of that participation need not be substantial. Reves, 507 U.S. at 507. The Reves Court also concluded that "Congress did not intend to extend RICO liability under § 1962(c) beyond those who participate in the operation or management of an enterprise through a pattern of racketeering activity." Id. at 184.

As the Court has already noted above, all The Defendants in this case are alleged to have been employed by or associated with AHERF in influential management roles as either officers or trustees. Because the level of participation need not be substantial, this Court finds that the Amended Complaint sufficiently pleads that all The Defendants, including Defendant Mellon, by virtue of their positions and alleged influence on AHERF, participated in the conduct or affairs of AHERF.

4. PATTERN OF RACKETEERING ACTIVITY

Under the fourth element to maintain a RICO claim, The Plaintiffs must allege that The Defendants engaged in a pattern of racketeering activity. Therefore, a plaintiff must allege the commission of at least one of the racketeering activities enumerated in 18 U.S.C. § 1961(a). Racketeering is defined in the RICO statute by a list of criminal activities that constitute predicate acts for purposes of RICO. As noted above, in this case, The Plaintiffs have alleged that The Defendants committed numerous acts of money laundering as the predicate acts on which their RICO claims may be based. See 18 U.S.C. 1956(a)(1)(B).

A RICO claim also requires that a claimant establish a "pattern" of such predicate acts, and that the scheme caused injury to claimant. RICO defines a "pattern" as "at least two acts of racketeering activity" occurring within a ten year period. 18 U.S.C. § 1961(5). This definition has been held to "state a minimum necessary condition for the existence of a "pattern." H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 237 (1989). However, the "two acts" requirement, while necessary to establish a pattern, is generally not sufficient for that purpose. See id. at 236 ("Nor can we agree with those courts that have suggested that a pattern is established merely by proving two predicate acts"). A pattern of racketeering activity requires more than the commission of the requisite number of predicate acts. A plaintiff must also "show that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity." Id.

at 239. Therefore, a pattern is established upon a showing of "continuity" and "relatedness". Id. at 239. Activities are related when they "have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events. Id. at 240.

a. PREDICATE ACTS

The Defendants claim The Plaintiffs have failed to allege the essential elements of money laundering and bankruptcy fraud in the Amended Complaint. Section 1956 of 18 U.S.C. defines "Laundering of monetary instruments" as:

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity -

(B) knowing that the transaction is designed in whole or in part

(I) to conceal or disguise the nature, the location, the source, the ownership or the control of proceeds of specified unlawful activity . . .

shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

In this case, the "specified unlawful activities" are alleged by The Plaintiffs to be bankruptcy fraud set forth by 18 U.S.C. § 152(7) as follows:

A person who -

(7) in a personal capacity or an agent or officer of any person or corporation, in contemplation of a case under title 11 by or against the person or any

other person or corporation, or with intent to defeat the provisions of title 11, knowingly and fraudulently transfers or conceals any of his property or the property of such other person or corporation . . .

shall be fined under this title, imprisoned not more than 5 years, or both.

The Amended Complaint alleges that the financial transactions constituting predicate acts consisted of: (1) the withdrawals of money from each of the endowed accounts and grants established by The Plaintiffs or to which The Plaintiffs contributed; (2) the deposits of all such funds into AHERF general purpose accounts; and (3) the withdrawals of such funds from the AHERF general purpose accounts to pay creditors, pay salaries, repay Mellon's loan, and/or for any purpose other than those specifically defined by the endowments or grants.

The Plaintiffs also allege as to the money laundering that The Defendants: (1) knew that the property involved in the financial transactions represented the proceeds of some form of unlawful activity (namely the scheme to defraud endowments and grants and their creators or beneficiaries); and (2) conducted and attempted to conduct the financial transactions, which transactions in fact involved the proceeds of specified unlawful activity, the proceeds of a scheme to defraud in violation of 18 U.S.C. § 152(7), while (3) knowing that the transactions were designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of the specified unlawful activity.

The Defendants argue: (1) that there is no fact averred in the Amended Complaint to suggest that the endowments and grants made their way into AHERF accounts as part of a plan to conceal them from AHERF's creditors in a contemplated bankruptcy, in violation of 18 U.S.C. § 152(7); and (2) that The Plaintiffs failed to allege that the assets transferred would have been property of the estate had they not been concealed or transferred.

First, the Court finds that The Plaintiffs have not sufficiently pleaded with particularity that Trustee Defendants Snyder, Danforth, Edelman, Fletcher, Nimick, O'Brien, and Palmer engaged in any pattern of racketeering activity. As discussed above, the Amended Complaint is virtually silent as to these seven defendants and fails to make any allegations that they even knew of any scheme within the alleged enterprise. Accordingly, the § 1962(c) claims will be dismissed as to these seven defendants.

With respect to the other defendants, the Court declines to comment on whether the Amended Complaint sufficiently pleads the elements of money laundering and bankruptcy fraud. The Court finds that any comment on the threshold issue of whether the allegedly transferred assets would have been property of the bankruptcy estate could lead to potentially conflicting results in other pending cases with the same parties and bankruptcy estate. Therefore, the Court refrains from making a

determination that would serve merely as dicta and yet could lead to such potentially conflicting results in other pending actions.

b. PATTERN: CONTINUITY

The Defendants also argue that The Plaintiffs have failed to plead sufficiently the "continuity" of the pattern of racketeering. Continuity is a "centrally temporal concept." H.J., Inc., 492 U.S. at 242. The continuity element requires that the scheme be shown to be an ongoing one, so a plaintiff must show either that the scheme has extended over a substantial amount of time, or that there is a threat that the activity will so extend. Because The Plaintiffs have alleged a scheme that came to an end at the time of bankruptcy filing, the question of whether there was a threat of continuity is not relevant in this case.

The Plaintiffs must prove "a series of related predicates extending over a substantial period of time." Id. at 242. While "substantial period of time" is an imprecise term, predicate acts "extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement: Congress was concerned in RICO with long-term criminal conduct." Id. In addition, the Court in U.S. v. Pelullo, 964 F.2d 193 (3d Cir. 1992), noted that the Third Circuit has never found continuity in any cases where the alleged predicate acts occurred within one year or less. Id. at 209.

In the instant case, the predicate acts alleged in the Amended Complaint do not sufficiently meet the continuity

requirement of the "pattern of racketeering" element of The Plaintiffs' § 1962(c) claim. According to the Amended Complaint, the earliest indication of any wrongdoing was in "the summer of 1997", the time according to neurobiologist Donald Faber that Allegheny began taking interest income from his endowment. Faber stated that Allegheny began taking the funds from his endowment to pay for departmental expenses. This allegation, however, is not specifically pled as to any defendant and does not point to any predicate act; rather it merely reflects a general statement about certain funds not at issue in this case, made by a neurobiologist who is not even a named plaintiff. At best, the allegation serves as circumstantial evidence that the alleged scheme to defraud started as early as the summer of 1997 or that a predicate act may have taken place. However, even taken in the light most favorable to The Plaintiffs, the allegation suggests only arguably that the scheme was taking place one year before the final predicate act, that is, before AHERF's filing of bankruptcy in the summer of 1998.

The Court finds that the Amended Complaint fails to allege a series of related predicate acts extending over a substantial period of time. Even assuming that Faber's endowment funds were being raided as early as the summer 1997, said allegation only arguably suggests a predicate act took place one year before the final predicate act. The Court determines that The Plaintiffs have failed to plead that the alleged scheme was an ongoing one, or that the scheme extended over a substantial

amount of time. It is the opinion of this Court that the alleged scheme to launder money and defraud bankruptcy creditors in this case did not amount to the type of long-term criminal conduct with which Congress was concerned in enacting RICO. The Court finds, therefore, that The Plaintiffs have failed to plead sufficiently the continuity of a pattern of racketeering activity. Accordingly, the Amended Complaint must be dismissed as to all The Defendants with respect The Plaintiffs' § 1962(c) claim.

C. SUBJECT MATTER JURISDICTION OF STATE LAW CLAIMS

The Court, having dismissed the 2 Counts for RICO violation in this case, will dismiss the remaining 15 Counts for various state law claims for lack of supplemental subject matter jurisdiction. The Court declines to assess the substantive merits of those state law claims.

Clarence C. Newcomer, S.J.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LAURENCE T. BROWNE, M.D.,	:	CIVIL ACTION
et al.,	:	
Plaintiffs	:	
	:	
v.	:	
	:	
SHERIF S. ABDELHAK, et al.,	:	
Defendants	:	NO. 98-6688

O R D E R

AND NOW, this day of August, 2000, upon consideration of the following motions, it is hereby ORDERED as follows:

(1) Defendant Anthony M. Sanzo's Motion to Dismiss (Document #61) is GRANTED.

(2) Defendant Sherif S. Abdelhak's Motion to Dismiss (Document #62) is GRANTED.

(3) Defendant Nancy A. Wynstra's Motion to Dismiss (Document #63) is GRANTED.

(4) Defendant David McConnell's Motion to Dismiss (Document #64) is GRANTED.

(5) Defendant Thomas O'Brien's Motion to Dismiss (Document #65)⁷ is GRANTED.

(6) Defendant Donald Kaye's Motion to Dismiss (Document #67) is GRANTED.

(7) Defendant Mellon Bank Corporation's Motion to Dismiss the Complaint for Failure to State a Claim, or in the

⁷Defendant O'Brien's Motion to Dismiss was incorrectly entered twice on the Docket Sheet as Document #65 and Document #68.

Alternative, for Failure to Join an Indispensable Party (Document #69) is GRANTED.

(8) Defendants AHERF Trustee's Motion to Dismiss (Document #70) is GRANTED.

(9) Defendant Dwight L. Kasperbauer's Motion to Dismiss Plaintiffs' First Amended Complaint (Document #73) is GRANTED.

(10) The above-captioned action is DISMISSED as to all Defendants.

(11) All outstanding motions are DENIED as moot, the above-captioned action having been DISMISSED.

AND IT IS SO ORDERED.

Clarence C. Newcomer, S.J.