

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

ADVANCED LIFELINE SERVICES, INC. : CIVIL ACTION
 :
v. :
 :
NORTHERN HEALTH FACILITIES, INC., :
D.B.A. STATESMAN HEALTH AND :
REHABILITATION CENTER, et al. : NO. 97-3757

MEMORANDUM AND ORDER

HUTTON, J.

December 8, 1997

Presently before the Court are the Motions to Dismiss by Defendant Northern Health Facilities, Inc. (Docket No. 4) and Defendant Lower Bucks Hospital (Docket No. 6). For the reasons stated below, the motions are **GRANTED in part** and **DENIED in part**.

I. BACKGROUND

The instant action arises from the events surrounding the termination of two contracts between plaintiff Advanced Lifeline Services, Inc. ("ALS") and defendant Northern Health Facilities, Inc. ("Northern"). ALS, a Kentucky corporation with its principal place of business in Jefferson County, Kentucky, is a provider of respiratory therapy services to residents of nursing homes. Pl.'s Compl. at ¶ 9. ALS furnishes the nursing homes with equipment and staff members to deliver these services. Id. Northern, a Delaware corporation registered in Pennsylvania, allegedly owns Statesman Health and Rehabilitation Center

("Statesman") and Dresher Hill Health and Rehabilitation Center ("Dresher"). Id. at ¶¶ 2, 3. On November 1, 1994, ALS and Dresher entered into a Respiratory Care Services Agreement ("Dresher Agreement"), whereby ALS agreed to provide respiratory therapy services to Dresher's residents. Id. at ¶ 10. On March 1, 1994, ALS and Statesman entered into their own Respiratory Care Services Agreement ("Statesman Agreement"), whereby ALS agreed to provide similar services to Statesman's residents. Id. at ¶ 11.

Defendant The Lower Bucks Hospital ("LBH") is a non-profit Pennsylvania corporation, with its principal place of business in Bucks County, Pennsylvania. Id. at ¶ 4. LBH entered into a contract with Statesman, whereby LBH agreed to provide respiratory therapy services to Statesman's Medicare patients. Id. at ¶ 12. On April 22, 1994, however, ALS and LB entered into a Management Services Agreement ("LBH Agreement"). Id. According to the LBH Agreement, ALS agreed to manage the provision of respiratory therapy services which LBH previously agreed to provide to Statesman. Id.

Both the Statesman and Dresher Agreements contained a clause allowing either party to terminate the agreement if a change in "the health care regulatory or reimbursement environment . . . has a materially adverse effect on either party." Id. at ¶ 13. To terminate the agreement under this

provision, the terminating party was required to "give a termination notice to the other party specifying the adverse effect and the effective date of termination." Id. Moreover, the LBH Agreement provided that if the Statesman Agreement was terminated, the LBH Agreement would terminate simultaneously. Id. at ¶ 14.

On January 1, 1996, the Pennsylvania Department of Public Welfare instituted a change "in the health care regulatory or reimbursement environment which" materially effected Northern. Id. at ¶¶ 15, 17, 20. On February 6, 1997, Northern gave ALS written notice of its intent to terminate the Dresher Agreement. Id. at ¶ 16. On April 2, 1997, Northern gave ALS written notice of its intent to terminate the Statesman Agreement. Id. at ¶ 18. On April 4, 1997, LBH notified ALS that LBH intended to terminate the LBH Agreement. Id. at ¶ 19. Despite ALS's attempts to amend its pricing to eliminate any materially adverse effect arising under the Statesman, Dresher, and LBH Agreements, those offers were refused. Id. at ¶¶ 17, 20.

On May 30, 1997, ALS filed their complaint, claiming that: 1) Northern breached the Dresher Hill and Statesman Agreements (Counts I and II); 2) LBH breached the LBH Agreement (Count III); 3) Northern and LBH committed tortious interference with contract (Counts IV, V, and VI); and 4) the defendants conspired to and committed various anti-trust violations (Counts

VII and VIII). On June 19, 1997, Northern filed the instant motion, seeking to dismiss Counts IV through VIII of the plaintiff's complaint under Federal Rule of Civil Procedure 12(b)(6). On July 7, 1997, LBH filed their motion to dismiss, requesting that this Court dismiss Count III in part and Counts VI through VIII in whole, pursuant to Rule 12(b)(6).

II. DISCUSSION

A. Rule 12(b)(6) - Claims Upon Which Relief May Be Granted

Federal Rule of Civil Procedure 8(a) requires that a plaintiff's complaint set forth "a short and plain statement of the claim showing that the pleader is entitled to relief" Fed. R. Civ. P. 8(a)(2). Accordingly, the plaintiff does not have to "set out in detail the facts upon which he bases his claim." Conley v. Gibson, 355 U.S. 41, 47 (1957). In other words, the plaintiff need only to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id.

When considering a motion to dismiss a complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6),¹ this Court must "accept as true the facts alleged in

¹/ Rule 12(b)(6) states as follows:

Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be

(continued...)

the complaint and all reasonable inferences that can be drawn from them. Dismissal under Rule 12(b)(6) . . . is limited to those instances where it is certain that no relief could be granted under any set of facts that could be proved." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990) (citing Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988)); see H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989). The court will only dismiss the complaint if "'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" H.J. Inc., 492 U.S. at 249-50 (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)).

B. Plaintiff's Claims

1. Breach of Contract

In Count III of its complaint, ALS alleges that LBH breached its contract with ALS by terminating the LBH Agreement. Id. at ¶ 30. Alternatively, ALS claims that LBH breached the covenants of good faith and fair dealing implied in the LBH Agreement. Id. In response, LBH asserts that its termination was authorized under the contract, and thus does not constitute a breach of the agreement. Def. LBH's Mot. at 5-6. Furthermore,

(...continued)

made by motion: . . . (6) failure to state a claim upon which relief can be granted

Fed. R. Civ. P. 12(b)(6).

LBH argues that because the contract specifically covered the events now at issue, no implied covenants existed. Def. LBH's Mot. at 6-7.

In order to successfully assert a claim for breach of contract under Pennsylvania law, a plaintiff must allege: "(1) the existence of a contract to which he and the defendants were parties, (2) the contract's essential terms, (3) breach of the contract by the defendants, and (4) damages resulting from the breach." Rototherm Corp. v. Penn Linen & Unif. Serv., Inc. No.CIV.A.96-6544, 1997 WL 419627, at 12 (E.D. Pa. July 3, 1997) (citations omitted). LBH does not dispute that ALS has alleged the first, second and fourth elements of a breach of contract claim. Instead, LBH argues that ALS fails to successfully assert a claim for breach of the parties' contract, given section 3.3 of the LBH Agreement.

Section 3.3 of the LBH Agreement provides that:

Notwithstanding any other provision of this Agreement to the contrary, in the event the [Statesman] Agreement . . . is terminated during the term of this Agreement, then this Agreement shall also terminate concurrently with the termination of [that] agreement and the parties thereafter shall only be entitled to such compensation that has accrued and become due and payable up to the time of termination.

Pl.'s Compl. Ex. C. § 3.3. Thus, it is clear from the language of the contract that LBH cannot be held liable for breach of

contract based solely on the termination of the LBH Agreement arising from the termination of the Statesman Agreement.

Instead, ALS alleges that LBH breached a restrictive covenant under the LBH Agreement. Under section 6.1 of the LBH Agreement, LBH "agree[d] that throughout the term of this Agreement, [LBH] will not interfere or initiate action which would cause the cancellation or alteration of the Agreement between ALS and [Statesman] or any other Facility with which ALS has an agreement for the provision of Respiratory Therapy Services." Pl.'s Resp. to Def. LBH's Mot. at 2 (quoting Pl.'s Compl. Ex. C. § 6.1). Although ALS fails to substantiate this claim under Count III, in Count VI ALS asserts that LBH "intentionally interfered in the contractual relationships then existing between ALS and Northern/Dresher Hill and Northern/Statesman, . . . as a direct and proximate consequence of which the contractual relationship between ALS and Northern/Dresher Hill and Northern Statesman were severed." Pl.'s Compl. at ¶ 42. Thus, ALS has sufficiently pled facts which, if true, would constitute a breach of section 6.1 of the LBH Agreement. Accordingly, this Court will not dismiss Count III of the plaintiff's complaint.

Although Count III is viable, this Court must address LBH's alternative argument. LBH asserts that "[u]nder Pennsylvania law, it is well-settled that no implied covenant

exists on any matter specifically covered by written contract." Def. LBH's Mot. at 6. Although ALS alleges that LBH was "further and alternatively in breach of the covenants of good faith and fair dealing implied in" the LBH Agreement, LBH argues that these matters were specifically covered by the parties' written contract. Thus, LBH contends, under Pennsylvania law no such implied covenants existed.

The parties acknowledge that Pennsylvania law governs the LBH Agreement. Pl.'s Compl. Ex. C. § 11.6; Def. LBH's Mot. at 6. Under Pennsylvania law, courts may imply a contract term in limited circumstances. See Kaplan v. Cablevision of PA, Inc., 671 A.2d 716, 720 (Pa. Super. Ct.), appeal den., 683 A.2d 883 (Pa. 1996) (table) (discussing doctrine of "necessary implication"). However, courts may not imply terms where doing so would conflict with the express terms of the contract. "The law will not imply a different contract than that which the parties have expressly adopted. To imply covenants on matters specifically addressed in the contract itself would violate this doctrine." Hutchison v. Sunbeam Coal Corp., 519 A.2d 385, 388 (Pa. 1986). Thus, there is:

an important distinction in contract law between cases in which parties have agreed on a term, and cases in which they have remained silent as to a material term or have discussed the term but did not come to an agreement. The law will imply a term only for omitted covenants. There can be no implied covenant as to any matter

specifically covered by the written contract between the parties.

Dorn v. Stanhope Steel, Inc., 534 A.2d 798, 808 (Pa. Super. Ct. 1987), appeal den., 544 A.2d 1342 (Pa. 1988) (table) (quoting Reading Terminal Merchants Ass'n v. Samuel Rappaport Assocs., 456 A.2d 552, 557 (Pa. Super. Ct. 1983)).

In the instant case, ALS alleges that LBH breached "covenants of good faith and fair dealing implied in the" LBH Agreement. Pl.'s Compl. at ¶ 30. Moreover, ALS asserts that its breach of contract claim is based on LBH's interference with the Statesman Agreement. Pl.'s Resp. to Def. LBH's Mot. at 4. The parties expressly agreed to refrain from such conduct. Pl.'s Compl. Ex. C. § 6.1. "There can be no implied covenant as to any matter specifically covered by the written contract between the parties." Dorn, 534 A.2d at 808 (quoting Reading Terminal Merchants Ass'n, 456 A.2d at 557). LBH cannot therefore be liable for breach of any implied covenants. Thus, ALS's claim against LBH under Count III is limited to those damages arising from LBH's alleged breach of section 6.1 of the LBH Agreement.

2. Tortious Interference of Contract

In Counts IV, V, and VI of its complaint, ALS alleges that Northern and LBH committed tortious interference with ALS's contract. Both Northern and LBH have moved to dismiss these Counts.

Pennsylvania has adopted Section 766 of the Restatement (Second) of Torts. Windsor Sec., Inc. v. Hartford Life Ins. Co., 986 F.2d 655, 659 (3d Cir. 1993). To successfully assert a cause of action for tortious interference under § 766, ALS must allege: "(1) the existence of a contract, (2) that the defendant intended to harm [ALS] by interfering with the contract, (3) the absence of privilege or justification for the interference, and (4) damages." Rototherm Corp., 1997 WL 419627, at *13 (citations omitted). In support of Counts IV, V, and VI, ALS alleges that it had two agreements with Northern, and an agreement with LBH. Pl.'s Compl. at ¶¶ 10, 11, 12. ALS states that Northern intentionally interfered with ALS's contracts with Northern and LBH. Pl.'s Compl. at ¶¶ 34, 38. Moreover, ALS claims that LBH intentionally interfered with ALS's contracts with Northern. Pl.'s Compl. at ¶ 42. Finally, ALS claims that these acts were without privilege or justification and caused ALS to suffer damages. Pl.'s Compl. at ¶¶ 34, 38, 42.

Northern sets forth two arguments in its Motion to Dismiss supporting its request for dismissal of Counts IV and V. First, Northern contends it cannot be liable for tortious interference with regard to the Dresher and Statesman Agreements, because Northern was a party to those contracts. Pl.'s Compl. at ¶¶ 34, 38. Under Pennsylvania law a party cannot tortiously interfere with a contract to which it is a party. Maier v.

Maretti, 671 A.2d 701, 707 (Pa. Super. Ct. 1995), appeal den., 694 A.2d 622 (Pa. 1997) (table). Thus, this Court finds that Northern is not liable for tortious interference with regard to the Statesman or Dresher contracts.

Second, Northern argues that it cannot be held liable for tortious interference with regard to the LBH Agreement under section 766. "Section 766 addresses disruptions caused by an act directed not at the plaintiff, but at a third person: the defendant causes the promisor to breach its contract with the plaintiff. Section 766A addresses disruptions caused by an act directed at the plaintiff: the defendant prevents or impedes the plaintiff's own performance." Windsor Sec., Inc., 986 F.2d at 660. Only claims arising under section 766 are actionable under Pennsylvania law. Accordingly, Northern claims that it cannot be liable for tortious interference with regard to the LBH Agreement, because LBH's termination of that contract was merely a "by-product of Northern's termination of the Statesman contract." Def. Northern's Mot. at 9. Thus, Northern's conduct was not directed towards inducing LBH to breach the LBH contract; instead, Northern's termination of the Statesman contract was directed only at harming ALS.

In response, ALS agrees that Northern's termination and alleged breach of the Statesman contract was directed at ALS. Pl.'s Resp. to Def. Northern's Mot. at 5. However, ALS also

asserts that "Northern made improper and unlawful overtures to [LBH], without justification of privilege, for the sole purpose of inducing or causing [LBH] to breach its contract with ALS." Id. (citing Pl.'s Compl. at ¶¶ 34, 38). Thus, ALS claims that Northern committed wrongful acts, in addition to its breach, intended to induce LBH to breach the LBH Agreement.

Accordingly, ALS has successfully alleges a claim for tortious interference against Northern in Counts IV and V. In paragraphs 34, 35, 38 and 39 of its complaint, ALS has alleged the existence of a contract between ALS and LBH, an intent by Northern to interfere with that contract, an absence of privilege or justification, and damages suffered by ALS as a result. Although Northern's breach was directed at ALS, additional wrongful acts intended to induce LBH to breach the LBH Agreement fall within the ambit of section 766.

Moreover, ALS has sufficiently pled a cause of action for tortious interference with contract against LBH in Count VI. For purposes of its motion to dismiss, LBH concedes that the plaintiff has sufficiently pled the existence of a contract between ALS and Northern, LBH's intent to harm ALS by preventing the completion of that contract, and harm to ALS resulting from LBH's conduct. Def. LBH's Mot. at 8. Moreover, ALS has sufficiently pled the final element, by alleging that LBH acted "without justification or privilege therefor." Pl.'s Compl. at ¶

42; see Rototherm Corp., 1997 WL 419627, at *13 (citations omitted) (listing elements required).

LBH argues that its conduct, although intentional, was not improper. Moreover, LBH contends that this Court should not accept as true ALS's allegation that LBH's interference was "without justification or privilege." Id. LBH asserts that this is a mere legal proposition, unsupported in the complaint. In support of this argument, LBH cites Allied Sec., Inc. v. Security Unlimited, Inc., 401 A.2d 1219, 1221-22 (Pa. Super. Ct. 1979).

LBH's argument, however, is misguided. Allied Sec., Inc. dealt with the factual allegations necessary to overcome a demurrer. As LBH knows, the Federal Rules of Civil Procedure apply to the instant case. Under the Federal Rules, the plaintiff does not have to "set out in detail the facts upon which he bases his claim." Conley, 355 U.S. at 47. In other words, the plaintiff need only to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id. This Court can dismiss the complaint only if "'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" H.J. Inc., 492 U.S. at 249-50 (quoting Hishon, 467 U.S. at 73). Guided by these principles and taking the factual allegations within the plaintiff's complaint as true, this Court finds that ALS has sufficiently pled the elements of tortious interference.

Accordingly, Northern's motion is granted with respect to ALS's tortious interference claim concerning Northern's interference with the Statesman and Dresher Agreements. However, the defendants' motions are denied with respect to the other claims of tortious interference alleged in Counts IV, V, and VI.

3. Anti-Trust Violations

a. Count VII

In Count VII of its complaint, ALS alleges that the defendants' actions constitute a violation of the Sherman Anti-Trust Act, 15 U.S.C. § 1 (1997). Section 1 of the Sherman Act provides that, "[e]very contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal." 15 U.S.C. § 1 (1997). To maintain a cause of action under this statute, a plaintiff must prove:

(1) that the defendants contracted, combined, or conspired among each other; (2) that the combination or conspiracy produced adverse, anti-competitive effects within relevant products and geographic markets; (3) that the objects of and the conduct pursuant to that contract or conspiracy were illegal; and (4) that the plaintiffs were injured as a proximate result of that conspiracy.

Tunis Bros. Co., Inc. v. Ford Motor Co., 952 F.2d 715, 722 (3d Cir. 1991) (quotations and citations omitted), cert. denied, 505 U.S. 1221 (1992); see Queen City Pizza, Inc. v. Domino's Pizza, Inc., 124 F.3d 430, 442 (3d Cir.), reh'g den., No.CIV.A.96-1638,

1997 WL 709765 (3d Cir. Oct. 27, 1997). Section 1 concerns "contracts, combinations or conspiracies between separate entities, not to conduct that is 'wholly unilateral.'" Rototherm, 1997 WL 419627, at * 16 (quoting Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752 (1984)). Thus, "'the very essence of a section 1 claim . . . is the existence of an agreement.'" Id. (quoting Alvord-Polk, Inc. v. F. Schumacher & Co., 37 F.3d 996, 999 (3d Cir. 1994), cert. denied, 514 U.S. 1063 (1995)).

In support of its claim, ALS alleges that the defendants "engaged in a conspiracy, combination or contract to accomplish the prohibited purpose of unduly or unreasonably restraining trade or competition by preventing the performance of the [Dresher, Statesman, and LBH Agreements] and the provision of health care services thereunder at a competitive cost." Pl.'s Compl. at ¶ 46. Further, ALS states the defendants' conduct prevented ALS from offering services provided for in the Agreements, caused a restraint of the free and natural flow of interstate commerce, and deprived ALS of the advantages of free competition. Id. at ¶¶ 47-49.

When deciding a motion to dismiss in an anti-trust case, a court must balance the need for leniency when a plaintiff asserts such a claim against the harm caused by forcing a

defendant to conduct discovery to defend a meritless claim. As Judge Buckwalter recently stated:

On one hand, we must be wary about dismissing an antitrust claim before the discovery period has commenced, since "the proof is largely in the hands of the alleged conspirators." Hosp. Bldg. Co. v. Trustees of Rex Hosp., 425 U.S. 738, 746, 96 S.Ct. 1848, 48 L.Ed.2d 338 (1976) (quoting Poller v. Columbia Broad., 368 U.S. 464, 473, 82 S.Ct. 486, 7 L.Ed.2d 458 (1962)). See also Commonwealth of Pennsylvania ex rel. Zimmerman v. Pepsico, Inc., 836 F.2d 173, 179 (3d Cir. 1988) ("[W]e should be extremely liberal in construing antitrust complaints.") (quoting Knuth v. Erie-Crawford Dairy Coop., 395 F.2d 420, 423 (3d Cir. 1968), cert. denied, 410 U.S. 913, 93 S.Ct. 966, 35 L.Ed.2d 278 (1973)). On the other hand, we should not shy away from dismissing an antitrust claim that is vague and conclusory in nature, for allegations of Section 1 conspiracy must be pled with a degree of specificity. "A general allegation of conspiracy without a statement of facts is an allegation of a legal conclusion and insufficient of itself to constitute a cause of action. Although detail is unnecessary, the plaintiffs must plead the facts constituting the conspiracy, its object and accomplishment." Pepsico, 836 F.2d at 182 (quoting Black & Yates v. Mahogany Ass'n, 129 F.2d 227, 231-32 (3d Cir. 1941), cert. denied, 317 U.S. 672, 63 S.Ct. 76, 87 L.Ed. 539 (1942)).

Rototherm, 1997 WL 419627, at * 16.

In the instant case, ALS supports its Section 1 claim with mere conclusory allegations. ALS's complaint is devoid of facts with regard to Count VII. ALS failed to plead facts constituting a conspiracy, its object, or its accomplishment.

Although “[a]n agreement need not be explicit to result in section 1 liability . . . and may instead be inferred from circumstantial evidence,” Alvord-Polk, Inc., 37 F.3d at 1000, ALS has failed to allege any facts supporting such an inference. Moreover, ALS has not identified a relevant product and geographic market. Accordingly, this Court grants the defendants’ 12(b)(6) motion as it pertains to Count VII.

b. Count VIII

In Count VIII of its complaint, ALS alleges that the defendants’ actions constitute a violation of Section 2 of the Sherman Anti-Trust Act. Section 2 states that: “[e]very person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony.” 15 U.S.C. § 2.

To make out a claim for monopolization: “a plaintiff must allege ‘(1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historical accident.’” Schuylkill Energy Resources v. PP&L, 113 F.3d 405, 412-13 (3d Cir.), cert. den., No.CIV.A. 97-387, 1997 WL 561974 (U.S. Nov. 10. 1997) (quoting Fineman v. Armstrong World Indus.,

Inc., 980 F.2d 171, 197 (3d Cir. 1992), cert. den., 507 U.S. 921 (1993)). Moreover, to establish a claim for attempted monopolization, "a plaintiff must allege '(1) that the defendant has engaged in predatory or anticompetitive conduct with (2) a specific intent to monopolize and (3) a dangerous probability of achieving monopoly power [in the relevant market].'" Schuylkill Energy Resources, 113 F.3d at 413 (quoting Spectrum Sports, Inc. v. McQuillan, 506 U.S. 447, 456 (1993)); Brader v. Allegheny Gen. Hosp., 64 F.3d 869, 877 (3d Cir. 1995). Finally, to maintain a private cause of action for damages under section 2, a plaintiff must allege an "antitrust injury," defined as damages flowing from "that which makes defendants' acts unlawful." Schuylkill Energy Resources, 113 F.3d at 413 (quoting Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc. 429 U.S. 477, 489 (1977)).

In the instant case, ALS alleges that: "Defendants conspired or combined to monopolize, or attempted to monopolize, interstate trade and commerce in the provision of respiratory therapy services by their combination to exclude ALS from its ability to continue its performance under the [Dresher, Statesman, and LBH Agreements]." Pl.'s Compl. at ¶ 53. As a result, ALS claims that it has suffered direct damages. Pl.'s Compl. at ¶ 54.

As a threshold matter, the plaintiff has failed to plead any relevant market. In Queen City Pizza, Inc., the United States Court of Appeals recently stated:

Plaintiffs have the burden of defining the relevant market. Pastore v. Bell Telephone Co. of Pennsylvania, 24 F.3d 508, 512 (3d Cir. 1994); Tunis Bros. Co., Inc.[, 952 F.2d at 726]. "The outer boundaries of a product market are determined by the reasonable interchangeability of use or the cross-elasticity of demand between the product itself and substitutes for it." Brown Shoe Co. v. U.S., 370 U.S. 294, 325 [(1962)]; Tunis Bros., 952 F.2d at 722 (same). Where the plaintiff fails to define its proposed relevant market with reference to the rule of reasonable interchangeability and cross-elasticity of demand, or alleges a proposed relevant market that clearly does not encompass all interchangeable substitute products even when all factual inferences are granted in plaintiff's favor, the relevant market is legally insufficient and a motion to dismiss may be granted.

Queen City Pizza, Inc., 124 F.3d at 436. ALS's complete failure to define a relevant market justifies this Court's decision to dismiss Count VIII.

Moreover, ALS's complaint lacks the requirements necessary to establish a monopoly or an attempt to monopolize. ALS has not asserted that the defendants possess a monopoly power in the relevant market or "the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historical accident.'" Schuylkill Energy Resources, 113 F.3d at 412-13.

Nor has ALS alleged that the defendants have "engaged in predatory or anticompetitive conduct with (2) a specific intent to monopolize and (3) a dangerous probability of achieving monopoly power [in the relevant market]." Id. at 413 (quoting Spectrum Sports, Inc., 506 U.S. at 456). Again, ALS's complaint is devoid of any factual allegations necessary to support a claim of monopolization. Accordingly, this Court grants defendants motions as they relate to Count VIII.

An appropriate Order follows.

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

ADVANCED LIFELINE SERVICES, INC. : CIVIL ACTION
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 NORTHER HEALTH FACILITIES, INC., :
 D.B.A. STATESMAN HEALTH AND :
 REHABILITATION CENTER, et al. : NO. 97-3757

O R D E R

AND NOW, this 8th day of December, 1997, upon consideration of the Motions to Dismiss by Defendant Northern Health Facilities, Inc. (Docket No. 4) and Defendant Lower Bucks Hospital (Docket No. 6), the motions are **GRANTED in part** and **DENIED in part**.

IT IS FURTHER ORDERED that:

(1) Count III is dismissed as it pertains to LBH's breach of implied covenants;

(2) Counts IV and V are dismissed as they pertain to Northern's Tortious Interference with the Statesman and Dresher Agreements; and

(3) Counts VII and VIII of the Plaintiff's Complaint are dismissed.

BY THE COURT:

HERBERT J. HUTTON, J.