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

TODD HELLER, SUSAN HELLER, THI SMITH LANE INVESTMENTS, INC. THI PARTNERS, TODD HELLER, INC. ABRAHAM BERNSTEIN, DIANNE G. BERNSTEIN, AB RITTENHOUSE INVESTMENTS LLC, RITTENHOUSE SQUARE PARTNERS, ABD RITTENHOUSE INVESTMENTS, INC., JAMES F. NASUTI, CELESTE NASUTI, JFN WILLIAMSON INVESTMENTS LLC, WILLIAMSON PARTNERS, and JFN WILLIAMSON INVESTORS, INC.	: CIVIL ACTION : : : NO. 04-CV-3571 : : : : : : : :
vs.	:
DEUTSCHE BANK AG, DEUTSCHE BANK SECURITIES, INC., D/B/A DEUTSCHE BANK ALEX BROWN, A DIVISION OF DEUTSCHE BANK SECURITIES, INC., DAVID PARSE, BDO SEIDMAN, L.L.P. ROBERT DUDZINSKY, ELLIOTT P. FOOTER, BEARD MILLER COMPANY, LLP STEVEN D. ORNDORF, WILKINSON AND TANDY LLC, RALPH E. LOVEJOY and KPMG, LLP	: : : : : : : : : :

MEMORANDUM AND ORDER

JOYNER, J. **February 3, 2005**

This case is now before the Court for disposition of the Motion of Defendants Ralph E. Lovejoy and Wilkinson and Tandy, LLC to dismiss Plaintiff's complaint against them for lack of personal jurisdiction pursuant to Fed.R.Civ.P. 12(b)(2) and for improper venue pursuant to Fed.R.Civ.P. 12(b)(3). For the following reasons, the motion shall be denied.

Factual Background

This case arose out of the Defendants' marketing and sale of a tax avoidance strategy or "shelter" to the Plaintiffs which was ultimately disallowed by the Internal Revenue Service. Specifically, Plaintiffs allege that all of the defendants, acting in concert, knowingly misrepresented and/or failed to disclose that the strategy, which involved the purchase of digital options on foreign currency, had no reasonable possibility of a profit and that in reality, the net effect of the options that Plaintiffs purchased and sold was nothing more than a wager with a probability of a pay-off equaling that of buying a lottery ticket. Defendants structured the transactions so that the total of fees paid to them was between 5½% and 9½% of the tax savings the client wished to achieve. Despite the issuance of two notices in 1999 and 2000 from the IRS informing accountants and tax attorneys across the country that tax strategies such as that being marketed by the defendants were illegal because they lacked a business strategy and economic substance, Defendants did not inform several of the plaintiffs of the notices and misinformed other plaintiffs that the IRS notices did not apply to the strategy in which they were engaged. Defendants also, *inter alia*, did not register the strategy as a tax shelter with the IRS as is required, did not disclose that

the legal opinion letters upon which Plaintiffs were relying as insurance were not independent legal opinions but were instead drafted by the same law firm which helped craft the strategy in the first place and did not inform Plaintiffs of the IRS' Tax Amnesty Program, under which taxpayers who voluntarily disclosed their participation in such strategies could avoid any penalties for underpayment of taxes.

As a result of their participation in the defendants' illegal tax strategy, Plaintiffs incurred significant penalties and interest to the IRS along with having to pay back taxes, and additional legal and accounting advisory fees. They commenced this suit on July 28, 2004 under the theories of Civil RICO, 18 U.S.C. §§1962(c) and (d), breach of contract, unjust enrichment, breach of the duty of good faith and fair dealing, breach of fiduciary duty, fraud, negligent misrepresentation, malpractice, civil conspiracy and for declaratory judgment. By way of the motion which is now before the Court, Defendants Ralph Lovejoy and Wilkinson & Tandy move to dismiss the plaintiffs' claims against them on the grounds of insufficient *in personam* jurisdiction.

Standard of Review

Under Fed.R.Civ.P. 12(h)(1), the defendant has the burden of raising lack of personal jurisdiction as it is a waivable defense. Streamlight, Inc. v. ADT Tools, Inc., Civ. A. No. 03-

1481, 2003 U.S. Dist. LEXIS 19843 at *2 (E.D.Pa. Oct. 9, 2003). Once a defendant has raised a jurisdictional defense, the burden shifts to the plaintiff to prove that jurisdiction exists in the forum state. IMO Industries, Inc. v. Kiekert AG, 155 F.3d 254, 257 (3d Cir. 1998). In determining whether personal jurisdiction exists, the court must construe all facts in a light most favorable to the plaintiff. Pinker v. Roche Holdings, Ltd., 292 F.3d 361, 368 (3d Cir. 2002). However, a plaintiff may not rest solely on the pleadings to satisfy its burden. Streamlight, supra., citing Carteret Savings Bank, F.A. v. Shushan, 954 F.2d 141, 146 (3d Cir. 1992). Rather, a plaintiff must present a prima facie case for the exercise of personal jurisdiction with sworn affidavits or other evidence that demonstrates, with reasonable particularity, a sufficient nexus between the defendant and the forum state to support jurisdiction. Mellon Bank v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992); Creative Waste Management, Inc. v. Capitol Environmental Services, Inc., Civ. A. No. 04-1060, 2004 U.S. Dist. LEXIS 21497 at *6 (E.D.Pa. Oct. 22, 2004).

If the plaintiff makes out a prima facie case in favor of personal jurisdiction, the burden then shifts to the defendant to establish that the presence of some other consideration would render jurisdiction unreasonable. Creative Waste Management, supra, citing Carteret Savings Bank, 954 F.2d at 150.

Discussion

A. Personal Jurisdiction

Generally, to exercise personal jurisdiction over a defendant, a federal court must undertake a two-step inquiry. Imo Industries, 155 F.3d at 259. First, the court must apply the relevant state long-arm statute to see if it permits the exercise of personal jurisdiction; then, the court must apply the precepts of the Due Process Clause of the Constitution. Id. Under Pennsylvania's long arm statute, Pennsylvania courts may exercise jurisdiction to "the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States." 42 Pa.C.S. §5322(b). The Due Process Clause of the Fourteenth Amendment provides that "a state may exercise personal jurisdiction over a non-resident defendant if its minimum contacts with the forum are 'such that the maintenance of a suit there does not offend traditional motions of fair play and substantial justice.'" Colantonio v. Hilton International Co., Civ. A. Nos. 03-1833 and 03-5552, 2004 U.S. Dist. LEXIS 10693 at *4 (E.D.Pa. June 8, 2004), quoting International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945) and Peek v. Golden Nugget Hotel and Casino, 806 F. Supp. 555, 556 (E.D.Pa. 1992). Hence, the reach of Pennsylvania's long-arm statute is coextensive with the Due

Process Clause of the Fourteenth Amendment and the two-step inquiry collapses into a single step. Schiller-Pfeiffer, Inc. v. Country Home Products, Inc., Civ. A. No. 04-CV-1444, 2004 U.S. Dist. LEXIS 24180 at *12 (E.D.Pa. Dec. 1, 2004); Creative Waste Management, 2004 U.S. Dist. LEXIS at *7.

The exercise of jurisdiction can satisfy Due Process on one of two distinct theories: a defendant's general or claim-specific contacts with the forum. Streamlight, 2003 U.S. Dist. LEXIS at *6, citing Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408, 414, n.8, 104 S.Ct. 1868, 1869, 80 L.Ed.2d 404 (1984). General jurisdiction is based upon the defendant's "continuous and systematic contacts" with the forum and exists even if the plaintiff's cause of action arises from the defendant's non-forum related activities. Remick v. Manfredy, 238 F.3d 248, 255 (3d Cir. 2001). It is important to note that the "continuous and systematic" standard is not an easy one to meet and thus the standard for general jurisdiction is much higher than that for specific jurisdiction. Colantonio, 2004 U.S. Dist. LEXIS at *6-*7; Surgical Laser Technologies, Inc. v. C.R. Bard, Inc., 921 F.Supp. 281, 284 (E.D.Pa. 1996); Clark v. Matsushita Electric Industrial Co., 811 F.Supp. 1061, 1067 (M.D.Pa. 1993). Contacts are continuous and systematic if they are extensive and pervasive. Colantonio, at *6, quoting Snyder v. Dolphin Encounters, Ltd., 235 F.Supp.2d 433, 437 (E.D.Pa. 2002).

Specific jurisdiction over a defendant exists when that defendant has "purposefully directed his activities at residents of the forum and the litigation results from alleged injuries that arise out of or relate to those activities." Miller Yacht Sales, Inc. v. Smith, 384 F.3d 93, 96 (3d Cir. 2004), quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985). A single contact that creates a substantial connection with the forum can be sufficient to support the exercise of personal jurisdiction over a defendant. Id., citing Burger King, 471 U.S. at 475 n. 18, 105 S.Ct. at 2174.

If these "purposeful availment" and "relationship" requirements have been met, a court may exercise personal jurisdiction over a defendant so long as the exercise of that jurisdiction comports with "traditional notions of fair play and substantial justice." Miller Yacht Sales, 384 F.3d at 97; Vetrotex Certainteed Corp. v. Consolidated Fiber Glass Products,Co., 75 F.3d 147, 150 (3d Cir. 1996). To defeat jurisdiction based on this fairness inquiry, a defendant must "present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." Miller Yacht, supra., quoting Burger King, 471 U.S. at 477, 105 S.Ct. at 2174. In determining fairness, the courts may consider "the burden on the defendant, the forum state's interest in

adjudicating the dispute, the plaintiff's interest in convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several states in furthering fundamental substantive social policies." Burger King, 471 U.S. at 477, 105 S.Ct. at 2184, quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292, 100 S.Ct. 559, 564, 62 L.Ed.2d 490 (1980).

Applying the foregoing to the case at hand, it appears clear from both the pleadings and the evidence supplied by the parties that Wilkinson & Tandy is a limited liability company organized and existing under the laws of North Carolina, with its sole place of business in Charlotte, N.C. Although now apparently a defunct entity, at all relevant times Wilkinson & Tandy did not have any offices, employees, assets or bank accounts in Pennsylvania. Similarly, Ralph Lovejoy is a resident of North Carolina and although he began working for a Pennsylvania company in 2004, he has no current clients in Pennsylvania and he has been present in the Commonwealth only twice in connection with his new job for training purposes only. Mr. Lovejoy works out of a home office in North Carolina and has no employees, agents assets or bank accounts in Pennsylvania. Accordingly, we cannot find that either Mr. Lovejoy or Wilkinson & Tandy have the requisite "continuous and systematic contacts" with Pennsylvania

to confer general jurisdiction over them. We do, however, find that sufficient specific jurisdiction exists with respect to each of the plaintiffs' claims against them.

1. Plaintiffs' RICO, fraud and conspiracy claims.

As noted, Plaintiffs' first three claims are for violations of Sections 1962(c) and (d) and aiding and abetting under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961, *et. seq.* ("RICO"). Plaintiff's seventh and eleventh claims are for fraud and civil conspiracy.

In assessing minimum contacts with respect to intentional torts, the Third Circuit has sanctioned the use of the "effects" test first articulated in Calder v. Jones, 465 U.S. 783, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984). See, IMO Industries, 155 F.3d at 261. This alternative test permits satisfaction of the minimum contacts prong of the personal jurisdiction inquiry if three elements are met: (1) the defendant committed an intentional tort; (2) the plaintiff felt the brunt of the harm in the forum such that the forum can be said to be the focal point of the harm suffered by the plaintiff as a result of that tort; and (3) the defendant expressly aimed his tortious conduct at the forum such that the forum can be said to be the focal point of the tortious activity. Id.; Creative Waste Management, 2004 U.S. Dist. LEXIS at *10.

Under RICO[1], specifically §1962(c),

> 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.

Under Section 1962(d),

> It shall be unlawful for any person to conspire to violate the provisions of subsection (a), (b), or (c) of this section.

According to the "Definitions" set forth in 18 U.S.C. §1961,

> As set forth in this chapter--
>
> (1) "racketeering activity" means...(A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: ... section 1341 (relating to mail fraud), section 1344 (relating to wire fraud) ...
>
> (3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;
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> (4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

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[1] Given that the Third Circuit has held that a private cause of action for aiding and abetting a RICO violation does not lie under 18 U.S.C. §§2 or 1964, we do not analyze the moving defendants' contacts or the effects of their alleged actions with respect to the third claim of Plaintiffs' complaint. See: Pennsylvania Association of Edwards Heirs v. Rightenour, 235 F.3d 839, 843-844 (3d Cir. 2000); Rolo v. City Investing Co. Liquidating Trust, 155 F.3d 644, 657 (3d Cir. 1998).

> (5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;
>
> ....

To state a cause of action under §1962(c), a plaintiff must at a minimum allege (1) the conduct (2) of an enterprise (3) through a pattern of racketeering activity or the collection of an unlawful debt. Salinas v. U.S., 522 U.S. 52, 62, 118 S.Ct. 469, 476, 139 L.Ed.2d 352 (1997); H.J., Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229, 232, 109 S.Ct. 2893, 2897, 106 L.Ed.2d 195 (1989); Sedima, S.P.R.L. v. Imrex Co., Inc., 473 U.S. 479, 496, 105 S.Ct. 3275, 3285, 87 L.Ed.2d 346 (1985). To plead a claim under §1962(d) a plaintiff must allege that: (1) there was an agreement to commit the predicate acts of fraud, and (2) defendants had knowledge that those acts were part of a pattern of racketeering activity conduct in such a way as to violate §§1962(a), (b) or (c). Martin v. Brown, 758 F.Supp. 313, 319 (W.D.Pa. 1990).

To plead fraud, a plaintiff must allege (1) a specific false representation of material fact, (2) knowledge by the person who made it of its falsity, (3) ignorance of its falsity by the person to whom it was made, (4) the intention that it should be acted upon, and (5) that the plaintiff acted upon it to his damage. U.S. ex. rel. Atkinson v. Pennsylvania Shipbuilding

Co., 255 F.Supp.2d 351, 407 (E.D.Pa. 2002); Sun Co.,Inc. v. Badger Design & Constructors, Inc., 939 F.Supp. 365, 369 (E.D.Pa. 1996).

Civil conspiracy is the agreement of two or more entities or individuals to engage in an unlawful act, or an otherwise lawful act by unlawful means when some overt act is taken in furtherance of the conspiracy and some actual legal harm accrues to the plaintiff. Doltz v. Harris & Associates, 280 F.Supp.2d 377, 389 (E.D.Pa. 2003). To prove a civil conspiracy under Pennsylvania law, a plaintiff must show (1) a combination of two or more persons acting with a common purpose to do an unlawful act or to do a lawful act by unlawful means or for an unlawful purpose, (2) an overt act done in pursuance of the common purpose and (3) actual legal damage. Proof of malice, *i.e.*, an intent to injure is essential in proof of a conspiracy. Id. See Also, Flynn v. Health Advocate, Inc., Civ. A. No. 03-3764, 2004 U.S. Dist. LEXIS 293 at *17 (E.D.Pa. Jan. 13, 2004).

Thus, it is clear that civil RICO, fraud and civil conspiracy are all intentional tort claims and that the first prong of the effects test is satisfied. As the affidavits of both Mr. Lovejoy and plaintiff Abraham Bernstein attest, Mr. Lovejoy contacted and scheduled a meeting with Mr. Bernstein in Philadelphia where Mr. Bernstein resided to discuss the tax strategy at issue. Mr. Lovejoy and Mr. Bernstein then met at Mr.

Bernstein's home in Philadelphia at which time Mr. Lovejoy introduced Mr. Bernstein to the tax strategy. Lovejoy followed this meeting up with several phone and conference calls to Mr. Bernstein in Philadelphia, which conference calls also included David Parse of Deutsche Bank and representatives from the law firm of Jenkens and Gilchrist and KPMG. Mr. Bernstein alleges that he agreed to participate in the tax strategy based upon the professional advice and reputations of Lovejoy, Jenkens, KPMG and Deutsche Bank. Plaintiffs have also produced a copy of an invoice from Wilkinson and Tandy, LLC to Jenkens and Gilchrist for "various professional advisory service rendered regarding Abraham Bernstein" in the amount of $65,000. From this evidence, we conclude that Mr. Lovejoy clearly directed his activities and allegedly tortious conduct at this forum, that the Bernsteins felt the brunt of the harm in Philadelphia and that this litigation arose directly out of Mr. Lovejoy's meeting and phone calls to Mr. Bernstein. Accordingly, we find that sufficient minimum contacts exist between this forum and defendants Lovejoy and Wilkinson and Tandy, and that the effects of Moving Defendants' allegedly tortious activity were felt here to justify the imposition of specific personal jurisdiction over them with respect to the plaintiffs' intentional tort claims.

We next consider whether the exercise of personal jurisdiction over the movants comports with the "traditional

notions of fair play and substantial justice." See, e.g., Vetrotex, 75 F.3d at 150. Where a defendant has purposefully directed his activities at forum residents as we have found the case to be here, the defendant must present a compelling case that the presence of some other consideration renders jurisdiction unreasonable. Carteret Savings Bank, 954 F.2d at 150.

Defendants have not presented the requisite compelling case. In support of their motion, Defendants rely solely on the fact that they do not reside, maintain an office, or have assets or bank accounts in Pennsylvania. However, the plaintiffs' suffered harm in Pennsylvania and Pennsylvania has a strong interest in protecting its residents and providing a forum for resolution of their disputes. Elbeco, Inc. v. Estrella de Plato, Corp., 989 F.Supp. 669, 678 (E.D.Pa. 1997). See Also, Grand Entertainment Group v. Star Media Sales, 988 F.2d 476, 483 (3d Cir. 1993)("Pennsylvania has an interest in protecting its residents from the kind of conduct [Plaintiff] claims the ... defendants engaged in.")

Furthermore, the burden on Defendants of defending this matter in Pennsylvania is not too great. To be sure, Defendants have already shown their ability to come to Pennsylvania: Mr. Lovejoy has acknowledged traveling here to meet with Mr. Bernstein and others while a representative of Wilkinson and

Tandy and more recently as an employee of his current, Pittsburgh-based employer, for training sessions. We thus find that the exercise of specific jurisdiction here complies with the fairness and substantial justice requirements imposed by International Shoe and its progeny.

2. Plaintiffs' Breach of Contract/Breach of Fiduciary Duty/Breach of Duty of Good Faith and Fair Dealing Claims[2].

The fact that a non-resident has contracted with a resident of the forum state is not, by itself, sufficient to justify personal jurisdiction over the nonresident. The requisite contacts, however, may be supplied by the terms of the agreement, the place and character of prior negotiations, contemplated future consequences and the course of dealings between the parties. Mellon Bank v. Farino, 960 F.2d at 1223, 1224, citing Burger King, 471 U.S. at 479. The Supreme Court has emphasized that with respect to interstate contracts, "parties who reach out

[2] Under Pennsylvania law, every contract does not imply a duty of good faith; rather the duty of good faith and fair dealing is limited to special types of contracts involving special relationships between the parties. Paul Revere Life Insurance Co. v. Patniak, Civ. A. No. 02-3423, 2004 U.S. Dist. LEXIS 7669 at *6 (April 1, 2004); Benevento v. Life USA Holding, Inc., 61 F.Supp.2d 407, 424-425 (E.D.Pa. 1999), citing D'Ambrosio v. Pennsylvania National Mutual Casualty Insurance Co., 494 Pa. 501, 431 A.2d 966, 970 (1981). As we cannot determine from the very limited record before us whether Plaintiffs' contract with the defendants involves the requisite special relationship, we find that for purposes of the jurisdictional inquiry, to the extent that Plaintiffs' claims arise out of the contractual relationship between the parties, sufficient minimum contacts exist for the same reasons given as to the breach of contract claim generally.

beyond one state and create continuing relationships and obligations with citizens of another state are subject to regulations and sanctions in the other state for the consequences of their activities." Burger King, 471 U.S. at 473, citing Travelers Health Association v. Virginia, 339 U.S. 643, 647, 70 S.Ct. 927, 929, 94 L.Ed. 1154, 1161 (1950). Thus, in a contractual setting, if a non-resident defendant has purposefully entered into a contract and availed itself of the privilege of conducting business in a specific forum, the defendant has done all that due process requires to subject him to jurisdiction in that forum because his activities are shielded by the benefits and protections of the forum's laws. Mellon Bank, 960 F.2d at 1222, citing Burger King, 471 U.S. at 475-76.

As discussed above, Moving Defendants' contacts evince a voluntary entry into Pennsylvania for the express purpose of conducting business here. Indeed, the evidence is clear that Mr. Lovejoy, acting as representative of Wilkinson and Tandy, sought out Mr. Bernstein, met with him in Philadelphia, explained the tax strategy, followed up their meeting with numerous phone calls and that these defendants received some $65,000 in compensation for their efforts. These contacts are, we find, sufficient to justify this Court's exercise of specific jurisdiction over defendants Lovejoy and Wilkinson and Tandy and given that we have already found the "fairness factors" have been satisfied in this

case, we deny the motion to dismiss with respect to Plaintiffs' breach of contract and contract-related claims.

3. Plaintiff's Negligence/Malpractice/Declaratory Judgment Claims.

Plaintiffs additionally assert that Defendants were negligent in their representations to them as to the legitimacy and legality of the tax strategy and were thereby further negligent in their professional representation of them. Plaintiffs thus claim entitlement to a declaratory judgment that Defendants were unjustly enriched by the fees which Plaintiffs paid them and that they are jointly and severally liable to them for all of the damages which Plaintiffs suffered as a result of Defendants' actions.

As previously discussed, the negligent acts allegedly performed by the moving defendants here were performed either in Pennsylvania or via telephone contact instigated by the movants. The damages which resulted from these purportedly negligent actions were suffered by Plaintiffs residing in this forum. While we recognize that the bare existence of a professional-client relationship and the giving of negligent advice is insufficient by itself to confer jurisdiction, a different result is appropriate where the relationship arose and the advice was given at the initiation of the defendant. See, Poole v. Sasson, 122 F.Supp.2d 556, 559 (E.D.Pa. 2000). For these reasons, we find that sufficient contacts exist between the defendants and

the plaintiffs to warrant the exercise of specific jurisdiction over the plaintiffs' negligence-based claims. Having previously concluded that our exercise of jurisdiction comports with due process, we deny the defendants' motion to dismiss as to the remaining claims in the plaintiffs' complaint.

B. Improper Venue.

Moving Defendants alternatively assert that the complaint should be dismissed as to them on the grounds of improper venue. We disagree.

Under 28 U.S.C. §1391(b),

> A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

The RICO statute has a venue provision which is supplementary to the general venue statute of §1391. Stamford Holding Co. v. Clark, Civ. A. No. 02-269, 2002 U.S. Dist. LEXIS 9155 at *13 (E.D.Pa. May 23, 2002); Shuman v. Computer Associates, International, Inc., 762 F.Supp. 114, 116 (E.D.Pa. 1991). Specifically, 18 U.S.C. §1965 states the following in relevant part:

> (a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person

resides, is found, has an agent, or transacts his affairs.

> (b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.
>
> ...

In this case, as we have previously found, at least as between the Bernstein plaintiffs and the moving defendants, a substantial part of the events and omissions giving rise to the instant causes of action occurred in this district when Mr. Lovejoy met and spoke with Mr. Bernstein. Given that a transfer of this case to the proper district court in North Carolina is not plausible given that it does not appear that such district would have jurisdiction or venue over any of the other defendants or plaintiffs in this action, it further appears that the interests of judicial economy would be best served if Mr. Lovejoy and Wilkinson & Tandy remained parties to the action which has been commenced here. We thus find venue to be proper in this district under both 28 U.S.C. §1391(b)(2) and 18 U.S.C. §1965(b) and the moving defendants' motion to dismiss shall therefore be denied in its entirety.

An order follows.

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

TODD HELLER, SUSAN HELLER, THI SMITH LANE INVESTMENTS, INC. THI PARTNERS, TODD HELLER, INC. ABRAHAM BERNSTEIN, DIANNE G. BERNSTEIN, AB RITTENHOUSE INVESTMENTS LLC, RITTENHOUSE SQUARE PARTNERS, ABD RITTENHOUSE INVESTMENTS, INC., JAMES F. NASUTI, CELESTE NASUTI, JFN WILLIAMSON INVESTMENTS LLC, WILLIAMSON PARTNERS, and JFN WILLIAMSON INVESTORS, INC.	:	CIVIL ACTION
vs.	:	
DEUTSCHE BANK AG, DEUTSCHE BANK SECURITIES, INC., D/B/A DEUTSCHE BANK ALEX BROWN, A DIVISION OF DEUTSCHE BANK SECURITIES, INC., DAVID PARSE, BDO SEIDMAN, L.L.P. ROBERT DUDZINSKY, ELLIOTT P. FOOTER, BEARD MILLER COMPANY, LLP STEVEN D. ORNDORF, WILKINSON AND TANDY LLC, RALPH E. LOVEJOY and KPMG, LLP	:	NO. 04-CV-3571

ORDER

AND NOW, this 3rd day of February, 2005, upon consideration of the Motion of Defendants Ralph E. Lovejoy and Wilkinson & Tandy, LLC to Dismiss Plaintiffs' Complaint for Lack of Personal Jurisdiction and Improper Venue, it is hereby ORDERED that the Motion is DENIED for the reasons set forth in the preceding Memorandum Opinion.

BY THE COURT:

s/J. Curtis Joyner
J. CURTIS JOYNER, J.