

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

DONA MARIE MATERA MINARDI and : CIVIL ACTION
SALVATORE MINARDI :
 :
 v. : NO. 97-7966
 :
 ALLEGIANCE CORP., et al. : (MDL NO. 1148)

MARK J. STERN, M.D., et al. : CIVIL ACTION
 :
 v. : NO. 97-7967
 :
 ALLEGIANCE CORP., et al. : (MDL NO. 1148)

LINDA SKELLY, et al. : CIVIL ACTION
 :
 v. : NO. 97-7968
 :
 ALLEGIANCE CORP., et al. : (MDL NO. 1148)

MARIE STARK, et al. : CIVIL ACTION
 :
 v. : NO. 97-7969
 :
 ALLEGIANCE CORP., et al. : (MDL NO. 1148)

KAREN E. PLOCHARCZYK, et al. : CIVIL ACTION
 :
 v. : NO. 97-7970
 :
 ALLEGIANCE CORP., et al. : (MDL NO. 1148)

MARY CANDACE COLLARD, D.D.S. : CIVIL ACTION
 :
 v. : NO. 97-7972
 :
 ALLEGIANCE CORP., et al. : (MDL NO. 1148)

BALVINDER BATRA : CIVIL ACTION
 :
 v. : NO. 97-7973
 :
 ALLEGIANCE CORP., et al. : (MDL NO. 1148)

CURTIS ISZDORE BUTTS : CIVIL ACTION
: :
v. : NO. 97-7974
: :
ALLEGIANCE CORP., et al. : (MDL NO. 1148)

TRACEY MARIE ROWLEY, et al. : CIVIL ACTION
: :
v. : NO. 97-7975
: :
ALLEGIANCE CORP., et al. : (MDL NO. 1148)

RENEE C. ALBRECHT, et al. : CIVIL ACTION
: :
v. : NO. 98-1193
: :
ALLEGIANCE CORP., et al. : (MDL NO. 1148)

O R D E R - M E M O R A N D U M

AND NOW, this 28th day of April, 1998 the motions¹ of defendant Health Industry Manufacturers Association (HIMA) to be

¹ On April 15, 1998 plaintiffs and defendant Health Industry Manufacturers Association presented oral argument on similar motions filed in seven New York actions - Judith E. Einbinder v. Allegiance Corp., No. 97-CV-5810; Barbara Zucker-Pinchoff v. Allegiance Corp., No. 97-CV-5935; Marsha Boggs v. Allegiance Corp., No. 97-CV-5936; Myra A. Rudt-Pohl v. Allegiance Corp., No. 97-CV-5937; Laurie J. McGookin v. Allegiance Corp., No. 97-CV-5938; Susan Phillips v. Allegiance Corp., No. 97-CV-5939; and Toni Ann Sava v. Allegiance Corp., No. 97-CV-5940. The Maine action plaintiffs have not been directed under CMO Nos. 16, ¶ 3, and 21, ¶ I.B, to respond, but the issues involved are identical to those in the New York actions. Plaintiffs and HIMA are represented by the same attorneys, who have agreed to have the present motions ruled on at this time and without plaintiffs' responses.

dismissed from the 10 above-captioned actions, all filed in the District of Maine, is denied. Fed. R. Civ. P. 12(b)(6).² The reasons are set forth in the order-memorandum filed this date in Einbinder v. Allegiance Corp., C.A. No. 97-5810. The pertinent substantive law of Maine is in accord with that of New York and Pennsylvania. Potter, Prescott, Jamieson & Nelson, P.A. v. Campbell, NO. CUM-97-69, 1998 WL 153229, at *2 (Me. Apr. 3, 1998) (concert of action or civil conspiracy); Burnside v. Abbott Laboratories, 351 Pa. Super. 264, 277-78, 280-81, 505 A.2d 973, 980-81, 982 (1985) (concert of action and civil conspiracy).³

Edmund V. Ludwig, J.

² Under Rule 12(b)(6), the allegations of the complaint are accepted as true, all reasonable inferences are drawn in the light most favorable to the plaintiff, and dismissal is appropriate only if it appears that plaintiff could prove no set of facts that would entitle him to relief. Weiner v. Quaker Oats Co., 129 F.3d 310, 315 (3d Cir. 1997).

³ HIMA's motions do not discuss the question of applicable law. With the exception of plaintiffs Balvinder Batra and Curtis Iszdore Butts – who are alleged to be citizens of New Jersey and California, respectively – all plaintiffs are citizens of New York. A fraud action for civil conspiracy or concert of action exists in each of these three jurisdictions. Monastra v. Konica Business Machines, 43 Cal. App.4th 1628, 1644-45, 51 Cal. Rptr.2d 528, 539 (1996) (civil conspiracy); Morgan v. Union County Board of Chosen Freeholders, 268 N.J. Super. 337, 364, 633 A.2d 985, 998 (1993) (civil conspiracy), cert. denied, 135 N.J. 468, 640 A.2d 850 (1994); McGuinness v. Wakefern Corp., 257 N.J. Super. 339, 342, 608 A.2d 447, 449 (1991) (concert of action); Sado v. Ellis, 882 F. Supp. 1401, 1408 (S.D.N.Y. 1995) (civil conspiracy); City of New York v. Lead Industries Association, Inc., 190 A.D.2d 173, 177-78, 597 N.Y.S.2d 698, 700 (App. Div. 1st Dept. 1993) (concert of action).