COMMERCE CASE MANAGEMENT PROGRAM DECISIONS:

CIVIL CONSPIRACY

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INTRODUCTION

Despite its deceivingly simple nature and frequent use in commercial litigation, a claim for civil conspiracy often raises a myriad of issues and ambiguities. As United States Supreme Court Justice Jackson famously declared, civil conspiracy is often "chameleon-like", its elements "so vague as to avoid definition."[2] Exploring how civil conspiracy has been delineated by Commerce Court Judges is essential to understanding the breadth of Commerce Court jurisprudence.

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[1] Jeffrey Mannion and Frank Podesta, Class of 2009, Rutgers Camden School of Law are the authors and Teresa N. Cavenagh, Partner at Duane Morris LLP is the editor and a co-author. None of these materials is offered, nor should be construed, as legal advice. The information provided should not be relied upon as legal advice or a definitive statement of the law. For such advice, the reader should consult his or her own legal counsel. The views, information and content expressed herein are those of the authors and do not represent the views of Duane Morris LLP, which did not participate in and takes no position on the nature, quality, or accuracy of such content. This work is part of a joint project between the Philadelphia Bar Association's Business Law Section and its Business Litigation Committee, and students from Temple's Beasley School of Law, the Rutgers-Camden School of Law and the University of Pennsylvania School of Law. Students work with a lawyer mentor/editor to summarize and describe opinions in the Commerce Case Management Program by subject area. Each lawyer works with one, two or three law students on a particular area of the law in which the Commerce Program Judges have issued opinions, with the students doing the research and writing and the lawyer guiding and editing the work. As completed, each "Chapter" is posted on the Business Litigation Committee's web page, which can be located on the Bar Association's website, http://www.philadelphiabar.org/. The goal is to cover the hundreds of opinions already written, and then to keep up with new opinions. Ideally, we hope to publish this compilation in a single book. If you are interested in participating in this project that has so many potential benefits, please contact Lee Applebaum at (215) 893-8702 or lapplebaum@finemanlawfirm.com. Temple Law Professor William J. Woodward, Jr. was and is essential to the creation and development of this effort, and Professor Eve Klothen has been instrumental in the effort.

[2] Krulewitch v. United States, 336 U.S. 440, 446-47 (1949) (Jackson, J., concurring).

To state a valid claim for civil conspiracy in Pennsylvania, a party must show that: "two or more persons combined or agreed with intent to do an unlawful act or to do any otherwise lawful act by unlawful means."[3] Other cases have stated the test as including "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."[4] An "overt act" must be performed which results in "actual legal damage"[5]; communication alone is insufficient.[6] "'[P]roof of conspiracy must be made by full, clear and satisfactory evidence. The mere fact that two or more persons, each with the right to do a thing, happen to do that thing at the same time is not by itself an actionable conspiracy.'"[7] Thus, as to the communication itself, there must be "full, clear and satisfactory evidence" of its content.[8] A plaintiff must also prove malice on the part of the defendants, but at the pleading stage, malice can be averred generally, rather than by specific proof.[9]

With regard to pleading and establishing "who" has taken part in the conspiracy, the Commerce Court has consistently followed one of the more traditional and long-standing common-law rules which is derived from the law of agency: different actors within a single entity are deemed incapable of conspiring with one another.[10] Thus, a plaintiff must show either intent or an overt act on the part of at least two unaffiliated entities or individuals to plead a

[3]Skipworth by Williams v. Lead Indus. Assoc., 690 A.2d 169, 174 (Pa. 1997). It should be noted, however, that other tests have been used over time.
[4]Phillips v. Selig, 959 A.2d 420, 437 (Pa. Super. 2008), appeal denied, 2009 Pa. LEXIS 510 (March 24, 2009).
[5]Rutherfoord v. Presbyterian-University Hospital, 417 Pa. Super, 316, 612 A.2d 500, 508 (1992).
[6]Phillips v. Selig, 2007 Phila. Ct. Com. Pl. LEXIS 29 (C.C.P. Phila. Sept. 12, 2007) (Sheppard, J.), aff'd, 959 A.2d 420, 437 (Pa. Super. 2008), appeal denied, 2009 Pa. LEXIS 510 (March 24, 2009).
[7]Phillips v. Selig, 959 A.2d 420, 437 (Pa. Super. 2008) (citations omitted), appeal denied, 2009 Pa. LEXIS 510 (March 24, 2009).
[8]Fife v. Great Atlantic, 356 Pa. 265, 267, 52 A.2d 24 (1947).
[9]Baker v. Rangos, 229 Pa. Super. 333, 324 A.2d 498, 506 (Pa. Super. 1974).
[10]Rutherfoord v. Presbyterian University Hospital, 417 Pa. Super, 316, 612 A.2d 500, 508 (1992).

conspiracy. Accordingly, in Hydrair, Inc. v. National Environmental Balancing Bureau,[11] Judge Herron held that a claim for conspiracy could not stand where there were no allegations of collusion or intent by two of the named defendants. Because that left only a principal and its agent as the remaining defendants, who were incapable of conspiring with each other, there was no conspiracy claim stated.

The Commerce Court has held, however, that – at least for purposes of a *demurrer* – failure to specifically identify other non-entity parties did not cause a claim to run afoul of the principal/agent conspiracy rule. See Hemispherx Biopharma v. Asensio,[12] where the plaintiff alleged that several "John Doe" defendants joined with the defendant in conspiring to artificially lower its stock price. In Acme v. Dunkirk,[13] however, Judge Herron required plaintiffs to amend their pleading to show compliance with the rule.

The Commerce Court has also stayed true to traditional interpretations of civil conspiracy with regard to malice and establishment of the underlying offense. Particularly, malice can be averred generally and the predicate violation must be civil in nature and sufficiently pled. Thus, in Koch v. First Union,[14] Judge Herron upheld a claim for civil conspiracy over a preliminary objection even though no specific allegation or instance of malice was shown. The Court ruled that, if proven, the defendants' plan for and acceptance of the illicit benefits which would accrue

[11]February Term 2000, No. 2846, 2000 Phila. Ct. Com. Pl. LEXIS 73 (C.C.P. Phila. July 27, 2000).
[12]July Term 2000, No. 3970, 2002 Phila. Ct. Com. Pl. LEXIS 72 (C.C.P. Phila. October 22, 2002).
[13]Feb. Term 2000, No. 1559, 2000 Phila. Ct. Com. Pl. LEXIS 49 (C.C.P. Phila. September 18, 2000).
[14]May Term 2001, No. 0549**,** 2002 Phila. Ct. Com. Pl. LEXIS 82 (C.C.P. Phila. January 10, 2002).

from their actions was sufficient to infer malice. In Acme v. Dunkirk,[15] Judge Herron confirmed that a criminal law violation cannot serve as the predicate for a civil conspiracy claim. Judge Herron also stressed the importance of pleading a clear overt act. Allegations that a defendant has "allowed the plaintiff to believe" a certain set of facts or has failed to clarify an incorrect impression are insufficient to show that the defendant undertook an overt act in furtherance of the conspiracy.

[15]Feb. Term 2000, No. 1559, 2000 Phila. Ct. Com. Pl. LEXIS 49 (C.C.P. Phila. September 18, 2000).

COMMERCE CASE MANAGEMENT PROGRAM
CIVIL CONSPIRACY OPINIONS[16]

The following case summaries present an analysis of the Commerce Court opinions on the issue of civil conspiracy. These include opinions addressing pleading issues arising from the filing of preliminary objections, as well as those addressing proof issues in connection with summary judgment motions and following bench trials.

Hydrair, Inc. v. National Environmental Balancing Bureau, February Term 2000, No. 2846, 2000 Phila. Ct. Com. Pl. LEXIS 73 (C.C.P. Phila. July 27, 2000) (Herron, J.) (the court sustained a preliminary objection to a claim for conspiracy to defame where the only two parties alleged to have conspired were a principal and its agent).
This Opinion is available at http://fjd.phila.gov/pdf/cpcvcomprg/hydrair2.pdf.

In Hydrair, Inc. v. National Environmental Balancing Bureau (NEBB), the Court re-affirmed the principle that agents of a single entity cannot conspire among themselves. Where other parties are not alleged to have taken part in the conspiracy at issue, the claim must fail.

Hydrair was an environmental balancing firm which tests and balances heating and air conditioning systems. NEBB was a national trade association which certifies such firms and the Pennsylvania Environmental Balancing Association (PEBA) was NEBB's statewide affiliate. Defendant Eastern Air Balance, Inc. (EAB) was a direct competitor of Hydrair's and defendant Bobby Roaten was a principal at EAB. Hydrair alleged that the defendants engaged in a concerted and ultimately successful effort to spread misinformation about Hydrair and the quality of its work. The alleged result of this campaign was Hydrair's decertification by both PEBA and NEBB.

The Court concluded that Hydrair failed to plead PEBA or NEBB's involvement in the conspiracy. Rather, they were alleged only to have *responded to* the conspiracy by voting to

[16]These summaries were prepared through April 2009.

decertify Hydrair and, in PEBA's case, by passing on the supposedly false information to its parent organization. The Court noted that: "There is no allegation that NEBB and PEBA knew that Roaten's statements were false or that [they] knew of and shared Roaten's wrongful intentions." Without NEBB and PEBA, the only two defendants which remained were EAB and Roaten. Citing Rutherfoord v. Presbyterian University Hospital,[17] the Court concluded that as principal and agent, the two could not conspire with one another. Accordingly, the defendant's preliminary objection to the civil conspiracy claim was sustained.

Hemispherx Biopharma. Inc. v. Asensio, July Term 2000, No. 3970, 2002 Phila. Ct. Com. Pl. LEXIS 72 (C.C.P. Phila. Feb. 14, 2001) (Sheppard, J.) (the Court denied a preliminary objection where the plaintiff had alleged a conspiracy between the named defendant and several John Doe defendants).
This Opinion is available at http://fjd.phila.gov/pdf/cpcvcomprg/hemis-dh.pdf.

In Hemispherx Biopharma. Inc. v. Asensio, the Court upheld the sufficiency of a claim for civil conspiracy where only one of the parties to the conspiracy was identified in the pleadings. The Court concluded that provided the identity of the "John Doe" defendants could either be easily ascertained or discovered after the initial filing, the pleading was sufficient despite the defendants' contention that it violated the rule that a principal and agent cannot conspire with each other.

This lawsuit arose out of a purported scheme by Manuel Asensio, Asensio & Co. and Asensio.com (Asensio) to artificially manipulate Hemispherx Biopharma's (HBI) stock price in order to achieve increased gains from the short-selling of the stock. HBI alleged that following a massive short selling of stock, the defendants published a series of defamatory "research reports"

[17]417 Pa. Super. 316, 612 A.2d 500, 508 (1992).

and press releases regarding the development of the drug Ampligen.[18] As a result, the value of HBI's common stock declined by more than $300,000,000.

HBI alleged four claims against Asensio and "John Does 1-20": defamation, disparagement, intentional interference with existing and prospective business relations and civil conspiracy. HBI alleged that the "John Does" had joined with Asensio in the conspiracy, had taken part in the short-selling of HBI stock and had assisted Asensio with drafting the defamatory statements.

Asensio's objection argued that the inclusion of the "John Does" rendered HBI's civil conspiracy complaint insufficient. Asensio noted that the inclusion of anonymous parties inhibited its ability to prepare an adequate defense in response to the plaintiff's pleading.[19] More specifically, Asensio pointed to the rule that "agents of a single entity cannot conspire among themselves."[20] Hence, it argued that in the absence of the John Does, HBI's civil conspiracy claim would necessarily have fallen short.

The Court found that the requirements for considering a demurrer foreclosed this objection. In having to accept the allegations regarding the John Does as true and with HBI having pointed to specific acts committed by these as-yet unidentified parties, Asensio was not hampered in building its defense. The Court noted that for the purposes of sufficiently pleading

[18]Among the defamatory statements were claims that Ampligen was "toxic", had "no medical or economic value" and was an "obsolete drug." Asensio also published accusations that HBI made "fraudulent misrepresentations" regarding pending FDA approval of the drug. In addition to Asensio.com, the statements were also published in *Business Week*.

[19]Thus falling afoul of the Smith v. Wagner, 403 Pa. Super. 316, 319, 588 A.2d 1308, 1310 (1991) standard: facts alleged in the pleadings "must be sufficiently specific so as to enable [a] defendant to prepare [its] defense."

[20]Rutherfoord, 612 A.2d at 508-09.

conspiracy, the identity of co-conspirators was not important because such information would ultimately be revealed either in discovery or at trial.[21]

Acme Markets, Inc. v. Dunkirk Ice Cream Co., Feb. Term 2000, No. 1559, 2000 Phila. Ct. Com. Pl. LEXIS 49 (C.C.P. Phila. Sept. 18, 2000) (Herron, J.) (the Court required an amended complaint to be filed where substantial questions existed as to the identity of the parties to the alleged conspiracy and the degree of knowledge possessed by one of the defendants, and re-affirmed that a claim for civil conspiracy cannot be predicated upon a violation of criminal law).
This Opinion is available at http://fjd.phila.gov/pdf/cpcvcomprg/acme.pdf.

Based on a complicated set of facts involving food-supply industry practice and a nearly incomprehensible set of pleadings,[22] Judge Herron was unable to determine whether the complaint sufficiently alleged a conspiracy to survive a preliminary objection. Plaintiff Acme Markets was required to amend its complaint to include a greater degree of specificity, so that the Court could determine if in fact a proper claim for conspiracy was alleged.

Dunkirk Ice Cream Company ("Dunkirk") was the manufacturer of Abbott's brand ice cream ("Abbott's"). Dunkirk was represented in all relevant transactions by its authorized agent, William Wells ("Wells"). In or about 1990, the Mid-Atlantic Ice Cream Company ("Mid-Atlantic"), through its agent Daniel Desmond ("Desmond")[23] purchased the exclusive licensing rights to Abbott's and undertook efforts to have the brand distributed for sale to supermarkets and other stores in the Philadelphia area. Acme was one of the entities approached by Mid-Atlantic. In 1993, the two sides reached an agreement ("initial agreement") whereby Mid-

[21]As in fact happened in this case: HBI's counsel offered to share the names of certain John Doe defendants prior to the consideration of the Preliminary Objections.
[22]"On March 23, 2000, Plaintiff Acme Markets filed a complaint that is charitably characterized as convoluted, and at times inscrutable . . . In addition to a complicated statement of facts, the complaint consists of two counts that are not denominated as to cause of action but only as to defendants."
[23]Dunkirk, Wells, Mid-Atlantic and Desmond were all named defendants in the suit. Acme alleged that Wells at times served as an agent for all defendants.

Atlantic would pay Acme $500,000 in exchange for Acme carrying 509,000 sleeves of Abbott's in their stores.

According to industry practice, however, finalizing the transaction was not that simple. Rather than providing the ice cream directly to Acme, Dunkirk delivered the ice cream to "Rotelle"[24] and billed Mid-Atlantic. Acme then proceeded to buy the ice cream from Rotelle, but billed Mid-Atlantic $2.50 for each sleeve purchased.[25] Sales of Abbott's at Acme, however, never came close to the required 509,000 sleeves. By the end of 1994, Mid-Atlantic refused to pay the billback and advertising costs charged to it by Acme which was approximately $122,000.

In 1996, Acme ceased purchasing Abbott's from Rotelle. Desmond objected, reminding Acme of its obligation under the initial agreement to stock 500,009 units. Shortly thereafter, Mid-Atlantic's financial broker met with Acme, Wells and Desmond to try and resolve these issues. The resulting agreement ("second agreement") provided that Acme would pay $231,000 to Dunkirk in satisfaction of its obligations under the initial agreement. Acme alleged that all of the defendants had represented that the unpaid billback and advertising costs flowing from the initial agreement would be paid following the receipt of this secondary payment.[26]

Mid-Atlantic never made any payment towards the $122,000 and Acme commenced this action. As noted by Judge Herron, Acme appeared to allege the existence of two conspiracies arising out of the second agreement: first, that "[i]n bad faith, Wells, Dunkirk, Desmond and Mid-Atlantic conspired to mislead Acme as to whom Acme should make payments so they could

[24]"Rotelle" appears to be an intermediate level distributor.

[25]In the industry, such an arrangement is referred to as a "billback". Advertising costs were also included in these invoices.

[26]This point is a major source of confusion. Acme made this allegation in paragraph 60 of the complaint. Likewise, paragraph 62 states that "Desmond and Mid-Atlantic were fully aware that Acme made the payments to Dunkirk.'" The very next paragraph, however, avers the exact opposite: "Desmond and Mid-Atlantic had no knowledge that Acme made the payments to Dunkirk." (emphasis added).

wrongfully obtain Acme's money" and second, that "as part of the illegal conspiracy, Desmond and Dunkirk have refused to pay monies owed and promised to Acme in the amount of $122,236."

Judge Herron found that as pled, these two allegations were insufficient in several respects. First, Acme had failed to show evidence of any conspiracy between Dunkirk and Mid-Atlantic. Because Wells and Desmond acted as agents for the two companies, Acme could not point to "concerted action" between the two or between either one and the defendant companies: only the corporate defendants remained.[27] Due to explicit contradictions in the complaint regarding Mid-Atlantic's knowledge of Acme's payment to Dunkirk, such a claim could not be sufficiently alleged because if Mid-Atlantic was unaware of the transaction, it could not be said to have acted with the requisite concerted action and malice that civil conspiracy requires.[28] Acme also failed to identify any overt acts taken by the defendants in furtherance of the conspiracy. Instead the only allegation was that the defendants failed to correct Acme's misunderstanding of the effect of its payment under the second agreement.[29]

Acme also attempted to characterize the defendants' conduct as violations of Pennsylvania criminal law.[30] It argued that these statutory violations were sufficient to serve as the predicate "unlawful act" for a conspiracy claim. Although the defendants did not argue that violations of criminal statutes could not serve such a purpose, pointing to Superior Court precedent[31] and identifying the evidentiary and practical issues such an approach would raise,[32]

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[27]Acme "cannot rely on any concerted action between Dunkirk and Wells, on one hand, or Mid-Atlantic and Desmond on the other, because the complaint alleges that [they] were corporate officers, employees, owners or agents of the respective corporate defendants." Id.

[28]Acme also suggested that Mid-Atlantic's failure to repay the $122,000 by itself constituted sufficient malice. Judge Herron rejected this argument out of hand.

[29]"Acme vaguely alleges that one of the conspirators 'allowed' the improper payment: 'Desmond and Mid-Atlantic purposely allowed Acme to believe that it was acceptable for Acme to make the payments of $231,600 to Dunkirk.' " Id. at 35-36.

Judge Herron concluded that Acme's conspiracy claim had to be based solely on civil causes of action and not on violations of criminal statutes. In light of these deficiencies and the absence of necessary information to clarify the conspiracy allegations, Acme was ordered to file an amended complaint.

First Republic Bank v. Brand, August Term 2000, No. 147 (C.C.P. Phila. June 1, 2001) (Herron, J.) (Court sustained preliminary objection to a conspiracy count finding that Directors of a Bank could not conspire with the bank to deprive plaintiffs of payments due).
This Opinion is available at http://fjd.phila.gov/pdf/cpcvcomprg/firstrep.pdf.

This matter arises from a transaction in which shareholders of Fidelity Bond and Mortgage ("Fidelity") sold their 80% interest in Fidelity to First Republic and Phoenix Mortgage which formed a joint entity, FBMC Acquisition ("FBMC") to do the transaction. In connection with the transaction the shareholders were issued promissory notes. The shareholders alleged that they were induced to enter into the transaction based on the promissory notes and First Republic's representation that it would materially augment Fidelity's business and infuse additional capital if necessary.

Fidelity suffered substantial financial losses which the shareholders attributed to First Republic & Phoenix Mortgage's mismanagement. Thereafter, FBMC commenced negotiations with Keystone for a possible sale. Such sale would have allowed Fidelity to pay its obligations.

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[30]Specifically, 18 Pa. C.S. §3921 ("Theft by Unlawful Taking"); 18 Pa. C.S. §3922 ("Theft by Deception"); and 18 Pa. C.S. §3927 ("Theft by Failure to Make Required Disposition of Funds Received").
[31][A]bsent a civil cause of action for a particular action, there can be no cause of action for civil conspiracy to commit that act." Pellagatti v. Cohen, 370 Pa. Super. 422, 536 A.2d 1337, 1342 (1988), appeal denied, 519 Pa. 667, 548 A.2d 256 (1988).
[32]"Not only does a different burden of proof apply but criminal actions are prosecuted by the state. At trial, therefore, would a plaintiff have to submit evidence of an actual criminal conviction to establish this aspect of its claim? Would he have to assume the prosecutorial role and burden of proof?"

However, First Republic reneged on the sales transaction with Keystone. Fidelity became insolvent and filed for bankruptcy. First Republic initiated an action against the shareholders and the shareholders filed a counterclaim against First Fidelity and its officers.

In the conspiracy count of the counterclaim, the shareholders alleged that First Republic conspired with its directors to deprive the shareholders of payments due under the promissory notes. Citing Thompson Coal Co. v. Pike Coal Co.,[33] First Republic argued that the conspiracy claim failed because officers and directors of a company acting in their corporate capacity could not conspire with the corporation.

Judge Herron noted that although Thompson Coal had been narrowed more recently by the Superior Court decision in Shared Communications Services of 1800-80 JFK Blvd Inc v. Bell Atlantic,[34] Thompson Coal was still being cited for the proposition that a corporation could not conspire with its officers. In addition, Judge Herron rejected the shareholders' argument that the officers were acting on their own based on their own self interest. He noted that none of the allegations in the complaint supported that argument or that the officers had any personal stake in the transaction. Judge Herron cited to specific allegations in the counterclaim that the officers were acting on behalf of First Republic as evidence that the officers were not acing based on their own self interests. As a result, Judge Herron concluded that no claim for conspiracy had been stated.

[33]488 Pa. 198, 412 A.2d 466 (1979).
[34]692 A. 2d 570 (Pa. Super. 1997), appeal denied, 555 Pa. 704, 723 A.2d 673 (1998).

Commonwealth of Pennsylvania v. BASF Corporation, April Term 2000, No. 3127, 2001 Phila. Ct. Com. Pl. LEXIS 95 (C.C.P. Phila. March 15, 2001) (Herron, J.) (Court overruled preliminary objection to a conspiracy count of a complaint finding that three corporations at the time of the alleged conspiracy were separate and distinct entities and thus capable of conspiring with each other).
This Opinion is available at http://fjd.phila.gov/pdf/cpcvcomprg/basfop.pdf.

This matter arose from allegations by the Attorney General of Pennsylvania that representatives of the defendants sent correspondence to the Commonwealth designed to deceive the Commonwealth that there was no bioequivalent to the Defendants' drug, Synthroid. Defendant Boots Pharmaceutical was the successor in interest to Flint Laboratories, the manufacturer of Synthroid. Later Knoll became the successor to Boots. BASF was the parent corporation of Knoll.

Relying on the Superior Court decision in Shared Communication Services,[35] that there is no *per se* rule that a parent corporation and a subsidiary cannot be found to have conspired with each other, Judge Herron concluded that because the conduct predated the merger of Boots and Knoll, and because there were no facts alleged showing that Knoll and BASF were each other's alter egos, the preliminary objections to the conspiracy claim would be overruled.

Rick's Original Philly Steaks, Inc. v. Reading Terminal Market Corp., September Term, Nos. 785 & 1374, 2008 Phila. Ct. Com. Pl. LEXIS 43 (February 20, 2008) (Bernstein, J.) (the Court dismissed conspiracy count of the complaint finding that all the defendants were members of the board of a corporate entity and could not conspire with each other).
This Opinion is available at http://fjd.phila.gov/pdf/cpcvcomprg/070703822.pdf.

Plaintiff Rick's Original Philly Steaks ("Rick's) brought claims against its landlord, Reading Terminal Market Corp. (RTM) and its agents Paul Stenke and Ricardo Dunston arising from RTM's failure to enter into a written lease renewal, and RTM's attempt to evict Rick's from the space it occupied at the Reading Terminal Market (the "Market"). In the conspiracy

[35]692 A. 2d 570 (Pa. Super. 1997), appeal denied, 555 Pa. 704, 723 A.2d 673 (1998).

count of the complaint, Rick's alleged that various members of the RTM Board entered into an unlawful agreement to eliminate Rick's from the Market.

Judge Bernstein concluded that because all the defendants were alleged to be agents of RTM, they could not be liable for conspiring with RTM or among themselves to oust Rick's from the Market premises. Accordingly, Judge Bernstein dismissed the conspiracy count of the complaint.

Koch v. First Union Corp., May Term 2001, No. 0549, 2002 Phila. Ct. Com. Pl. LEXIS 82, (C.C.P. Phila. Jan. 10, 2002) (Herron, J.) (the Court held that malice and intent in a claim for civil conspiracy can be generally inferred for pleading purposes).
This Opinion is available at http://fjd.phila.gov/pdf/cpcvcomprg/kochpo1.pdf.

In Koch, the Court upheld the long-standing rule that malice or intent in a claim for civil conspiracy can be averred generally. Judge Herron noted that reference to specific statements or deeds need not be included in the pleadings.

Plaintiffs were homeowners who secured home equity loans through a subsidiary of First Union. They alleged that their contractor, Pennsylvania Resource Corporation, and its broker First Liberty, conspired with First Union and its subsidiary to "secure home equity loans on the basis of misleading 'good faith cost estimates'."[36] Plaintiffs asserted claims for violations of Pennsylvania's Unfair Trade Practices and Consumer Protection Law, breach of fiduciary duty, unjust enrichment, common law fraud and civil conspiracy.

First Union filed preliminary objections arguing that Koch's civil conspiracy pleading was insufficient because he had failed to show the requisite malice or intent on the part of the

[36]Specifically, the plaintiffs made five allegations: (1) they were all given the same estimates despite their wildly varying credit ratings; (2) the closing costs identified in the estimate were significantly less than the amount ultimately paid; (3) the loan origination fee was simply listed as 'N/A'; (4) there was no explanation or support for the mortgage broker fee; and (5) the settlement fee was significantly larger than that included in the estimate.

defendants. Although malice is a required element of a claim for civil conspiracy, it can be generally inferred for the purposes of initial pleadings.[37]

The Court concluded that sufficient pleading of the factual elements of a claim for civil conspiracy independently tends to infer malice. The Court noted that the illicit benefits which would accrue from the defendants' actions could not be realized without a certain degree of malice.[38] Thus, the Court concluded "it is enough that the factual averments of the entire complaint are legally sufficient."

Miller v. Santilli, July Term 2006, No. 1225, 2007 Phila. Ct. Com. Pl. LEXIS 252 (C.C.P. Phila. Sept. 20, 2007) (Bernstein, J.) (the Court held that a sufficient allegation of aiding and abetting fraud necessarily results in a sufficient pleading of civil conspiracy).
This Opinion is available at http://fjd.phila.gov/pdf/cpcvcomprg/060701225.pdf.

In Miller v. Santilli, the Court held that by sufficiently pleading a claim for aiding and abetting fraud, the plaintiff had necessarily pled a sufficient claim for civil conspiracy.

George Miller served as the Chapter 7 bankruptcy trustee of American Business Financial Services, Inc. ("ABFS"), a company which was in the business of selling sub-prime residential mortgage loans. He filed suit against four directors and three officers of ABFS, as well as five financial institutions which had engaged in business with ABFS. He asserted several claims arising from: (1) fraudulent overvaluing of the company's assets and (2) severe mismanagement and misuse of company funds which had occurred in the years leading to the bankruptcy.[39]

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[37] Larsen v. Philadelphia Newspapers, Inc., 411 Pa. Super. 534, 602 A.2d 324 (1991), appeal denied, 537 Pa. 622, 641 A.2d 587 (1994); Pa. R.C.P. 1019(b).

[38] "[D]efendants have agreed to engage in a scheme to injure plaintiffs and other class members by misrepresenting and concealing facts concerning their loans, with the intent that plaintiffs would rely thereon, which caused them to pay unreasonably high closing costs."

[39] Miller charged that the officers had "erroneously misused $5.7 million from the mortgage escrow funds", paid themselves more than $12 million in "unreasonable salaries and bonuses" at a time when the company was insolvent, filled the company payroll with family members,
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Specifically, he asserted claims for aiding and abetting breach of fiduciary duty, aiding and abetting fraud and conspiracy to do the same against the financial institutions for their taking part in transactions which masked ABFS's true financial state.

Rather than directly challenging the sufficiency of the conspiracy claim, the financial institutions argued that there was no claim for aiding and abetting fraud and breach of fiduciary duty ("civil aiding and abetting" or "concerted action") under Pennsylvania law. The Court disagreed, noting that §876 of the Restatement (Second) of Torts had been cited with approval by both the Pennsylvania Supreme and Superior Courts.[40] That section provides in pertinent part:

> For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he:
>
> (a) does a tortious act in concert with the other or pursuant to a common design with him, or
> (b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself, or
> (c) gives substantial assistance to the other in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to the third person.[41]

In his complaint, Miller alleged that "the substantial assistance provided by [the financial institutions] included . . . determining the value of the substantially inflated gain to be booked by ABFS in connection with the securitizations." Based on this allegation, the Court accepted the

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unlawfully paid more than $1.4 million in dividends and relieved one of the members from having to re-pay $600,000 he had previously borrowed from the company. He asserted claims against the directors for breach of fiduciary duty and gross negligence for their failure to put a stop to the officers' raiding of the company till.

[40] See Skipworth by Williams v. Lead Indus. Ass'n, 547 Pa. 224, 236, 690 A.2d 169, 174 (1997); see, e.g., Sovereign Bank v. Ganter, 914 A.2d 415, 424 (Pa. Super. 2006). The Court also observed that the tort of aiding and abetting a breach of fiduciary duty had been expressly recognized by the Commonwealth Court. *See* Koken v. Steinberg, 825 A.2d 723, 732 (Pa. Commw. 2003), appeal dismissed, 575 Pa. 103, 834 A.2d 1103 (2003).

[41] See Restatement (Second) of Torts §876 (1979).

inference that the institutions "(1) had knowledge of the Officers' wrongdoing; (2) committed their own wrong against ABFS; and (3) provided substantial assistance to the Officers in their fraudulent scheme." Thus the Court concluded that a valid claim for aiding and abetting fraud and breach of fiduciary duty had been pled.

Rather than separately considering the conspiracy claim, however, the Court stated that – for pleading purposes – aiding and abetting and conspiracy were one and the same and there was no need for any further inquiry.[42] The Court adopted the definition from Thompson Coal Co. v. Pike Coal Co., which provides that a plaintiff must show that "two or more persons combined or agreed with intent to do an unlawful act or to do an otherwise lawful act by unlawful means."[43]

Indymac Bank v. Arczip. Inc., June Term 2006, No. 0124, 2006 Phila. Ct. Com. Pl. LEXIS 433 (C.C.P. Phila. Nov. 28, 2006) (Bernstein, J.) (Court denied preliminary objections to conspiracy claim finding that although no fraud claim was stated, plaintiff had stated a claim for conspiracy to defraud).
This Opinion is available at http://fjd.phila.gov/pdf/cpcvcomprg/060600124.pdf.

Plaintiff, Indymac, and defendant, Arczip, were both creditors of a third parties, the Kogans, the owners of real property in Bucks County, Pennsylvania, which was mortgaged. Arczip secured a consent judgment against the Kogans in California in 2004. Arczip filed its judgment in Bucks County on April 23, 2004. On April 30, 2004, the Kogans refinanced their property with Indymac's predecessor. The Kogans did not inform Indymac's predecessor of the consent judgment and the Bucks County Prothonotary did not record the judgment until after the closing of the refinancing. In 2005, the Kogans defaulted on their settlement payment to Arczip and filed for bankruptcy.

[42]"The Trustee pled all the elements of a claim for aiding and abetting fraud and breach of fiduciary duty against the [financial] institutions. Based on these facts, the claim of conspiracy… also stands."
[43]488 Pa. 198, 412 A.2d 466 (1979).

In the conspiracy count of the complaint, Indymac alleged that Arczip conspired with the Kogans to defraud Indymac. Indymac alleged Arczip filed its judgment one week before the refinancing knowing that the judgment would not appear in any title search due to delays in indexing and recording of judgments in Bucks County. Although the Court found there was no fraud claim stated because there was no misrepresentation by Arczip, the Court did find that the complaint stated a claim for conspiracy. Similar to his later holding in Miller v. Santilli, discussed above, Judge Bernstein concluded that because the complaint alleged that Arczip knowingly assisted the Kogans to defraud Indymac, that it therefore stated a claim for conspiracy.

Phillips v. Selig, July Term 2000, No. 1550, 2007 Phila. Ct. Com. Pl. LEXIS 29 (C.C.P. Phila. Sept. 12, 2007) (Sheppard, J.), aff'd, 959 A.2d 420 (Pa. Super. 2008), appeal denied, 2009 Pa. LEXIS 510 (March 24, 2009) (the Court re-affirmed the need for a pre-existing civil cause of action before conspiracy may be alleged).
This Opinion is available at http://fjd.phila.gov/pdf/cpcvcomprg/000701550-091207.pdf.

In Phillips, the Commerce Court upheld the longstanding principle that a conspiracy may not be found in the absence of a civil cause of action for the same act. McKeeman v. Corestates Bank. N.A.[44] This matter involved an alleged conspiracy on the part of representatives of Major League Baseball ("MLB") to interfere with a contract between the League and the Umpire's union. The Court, in ruling on a motion for summary judgment, found that Plaintiff failed to demonstrate a "reasonable probability" that an agreement would have been entered into "but for" the actions of the MLB's representatives. The Court also concluded that intent to harm was not

[44]751 A.2d 655, 660 (Pa. Super. 2000).

shown. Applying the test for intentional interference with contractual relations set forth in Al Hamilton Contracting Co. v. Cowder,[45] the Court found that there was insufficient:

> purposeful action on the part of the defendant, specifically intended to harm the existing relation, or to prevent a prospective relation from occurring; and actual legal damage as a result of the defendant's conduct.

The Court concluded that the actions of the MLB's representatives did not constitute a conspiracy citing insufficient evidence. The Court noted that under Pennsylvania law, a plaintiff must demonstrate that the content of communications supports a conspiracy claim. Moreover, the Court concluded that the mere fact that two persons undertook actions which they had a right to take, at the same time, does not allow for an inference of conspiracy. Although two representatives of the League communicated with each other, the Court held that this was insufficient to evidence a conspiracy. The Court found that there was no evidence presented as to the content of the conversations to infer that any agreement was reached. Judge Sheppard relied on Fife v. Great Atlantic & Pacific Tea Co.,[46] which held that a claim of conspiracy must be demonstrated with "full, clear and satisfactory evidence." The Court found that Plaintiff had not met this burden. Because Plaintiff was unable to show intent and damages to support the underlying claim for intentional interference with contract, the Court concluded that no conspiracy claim was established and granted a motion for summary judgment in favor of MLB.

On appeal, the Superior Court affirmed. The appellate court: restated civil conspiracy's basic elements ("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"); the burden of proof ("'proof of conspiracy must be made by full, clear and satisfactory evidence. The mere fact that

[45]434 Pa. Super. 491, 644 A.2d 188 (1994).
[46]356 Pa. 265, 52 A.2d 24 (1947).

two or more persons, each with the right to do a thing, happen to do that thing at the same time is not by itself an actionable conspiracy.'"); and observed that "'absent a civil cause of action for a particular act, there can be no cause of action for civil conspiracy to commit that act.'"[47] The Superior Court found that all of the civil conspiracy claims were based on interference with prospective and existing contractual relations. The Superior Court had affirmed the Commerce Court's summary judgment finding no interference with contractual relations, and thus "no predicate cause of action exists upon which Appellants may assert claims for civil conspiracy."[48]

Liss v. Liss, June Term 2002, No. 3502, 2005 Phila. Ct. Com. Pl. LEXIS 453 (C.C.P. Phila. June 29, 2005) (Jones, J.), aff'd w/o opinion, 911 A.2d 193 (Pa. Super. 2006), appeal denied, 591 Pa. 684, 917 A.2d 315 (2007) (the Court granted summary judgment and dismissed the complaint, finding insufficient evidence that the alleged co-conspirator was involved in any of the decisions at issue).
This Opinion is available at http://fjd.phila.gov/pdf/cpcvcomprg/020603502.pdf.

Liss concerned a dispute between two brothers who shared ownership in a failing company ("LBI"). The plaintiff brother, William, was inactive in LBI, while the defendant brother, Sheldon was active. William alleged that Sheldon forced the liquidation of LBI without William's consent or knowledge and re-formed the business into another entity in which Sheldon was the sole shareholder ("Global"). William asserted claims for breach of fiduciary duty, promissory estoppel, conversion, fraud and conspiracy.

In the conspiracy count, William alleged that Sheldon combined forces with Jeffrey Waldman to "steal" LBI from William for the benefit of Sheldon and Global. The Court dismissed the conspiracy count finding that William had failed to demonstrate that Sheldon engaged in any unlawful activity. In addition, the Court dismissed the conspiracy count because

[47] 959 A.2d 420, 437 (citations omitted).
[48] Id.

William produced no evidence that Waldman was involved in any of the decisions which William claimed were the basis for the alleged wrongful acts. The Court noted that unsupported allegations of conspiracy are insufficient to establish a *prima facie* case of conspiracy.

Firstrust Bank v. DiDio, March Term 2005, No. 200, 2005 Phila. Ct. Com. Pl. LEXIS 376 (C.C.P. Phila. July 29, 2005) (Jones, J.) (the Court overruled preliminary objections to the conspiracy count finding sufficient allegations of a combination to breach a fiduciary duty, perpetrate a fraud and negligent misrepresentation).
This Opinion is available at http://fjd.phila.gov/pdf/cpcvcomprg/050300200.pdf.

Firstrust alleged that the defendants, an executive vice president and secretary of Firstrust, developed a plan to acquire "customer lists, marketing strategies, regulatory forms, pricing and other information" to establish a competing financial services firm. The complaint asserted claims for violation of the Uniform Trade Secrets Act, breach of fiduciary duty, unjust enrichment, fraudulent misrepresentation and nondisclosure, negligence misrepresentation, conspiracy and conversion.

The Court dismissed the claims of unjust enrichment and conversion finding them to be preempted by the theft of the trade secrets statute. However, the defendants' preliminary objections to the other claims were overruled. The Court noted that because the complaint alleged that the defendants worked together and/or with others to commit fraud and to breach their fiduciary duties, the Court found that the claim of civil conspiracy was sufficiently pled, relying on the decision in Strickland v. Univ. of Scranton.[49]

[49]700 A. 2d 979, 987-88 (Pa. Super. 1997).

Phila. TV Network, Inc. v. Reading Broadcasting, Inc., August Term 2001, No. 1663, 2005 Phila. Ct. Com. Pl. LEXIS 307 (C.C.P. Phila. July 14, 2005) (Sheppard, J.) (after a bench trial, the Court dismissed a counterclaim for conspiracy finding insufficient evidence of malicious intent).
This Opinion is available at http://fjd.phila.gov/pdf/cpcvcomprg/010801663.pdf.

This case involved a contractual dispute between two broadcasting companies, Philadelphia Television Network, Inc ("PTN") and Reading Broadcasting, Inc. ("RBI"). Due to its distressed financial condition, RBI sought to sell a full power TV station it operated in Reading, Pennsylvania (the "Station") to PTN. Because a competitor had filed a legal challenge to the Station's license, RBI was prohibited from selling the Station outright so it entered into an Option Agreement with PTN for PTN to purchase 40% of the Station and a Time Brokerage Agreement ("TBA") giving PTN the right to program the station. Thereafter a series of disputes arose between the parties regarding the operation of the Station, alleged improper expenditures and questionable revenue withholdings.

PTN filed claims for breach of contract and fraud.[50] The Court entered judgment in favor of PTN on its breach of contract claim and awarded damages in excess of $8,000,000 but found that the fraud claim was barred by the gist of the action doctrine.

RBI counterclaimed alleging claims for breach of contract, conversion, tortious interference with contract, and civil conspiracy. Although the Court found that there had been a breach of one contract and awarded some damages to RBI, it found that RBI failed to sustain its burden on the conversion claim and tortious interference claim.

In its conspiracy claim, RBI alleged that PTN conspired with Richard Glanton, PTN's Chairman, and an investment firm, Dimeling, Schreiber & Park, to squeeze RBI's cash flow, financially strangle RBI and cause RBI's shareholders to lose their investment. The Court found

[50]PTN also filed a claim for conspiracy but the court entered a compulsory nonsuit on that claim.

that RBI did not present evidence that PTN's actions during the life of the TBA were fueled by a malicious intent and hence ruled against RBI on its conspiracy claim.

Burton v. Bojazi, April Term 2005, No. 03551, 2005 Phila. Ct. Com. Pl. LEXIS 284, 75 Pa. D. & C. 4th 403 (C.C.P. Phila. June 17, 2005) (Abramson, J.) (the Court overruled the preliminary objection to the conspiracy count of the complaint finding sufficient allegations of intent and no need to specifically plead the dates, time or place of the conspiracy).
This Opinion is available at http://fjd.phila.gov/pdf/cpcvcomprg/050403551.pdf.

Plaintiff asserted claims for fraud, civil conspiracy, breach of contract and breach of fiduciary duty. The plaintiff, Burton, a shareholder of J & J Plumbing, alleged that the defendants, Mr. and Mrs. Bojazi, a shareholder and an employee of J & J, conspired to misappropriate the funding secured for the company's expenses, which Burton provided via lines of credit. Burton further alleged that the defendants misused corporate funds for personal expenses and that this misappropriation caused him actual damages, including lost funds and damage to his credit rating.

In denying the preliminary objection to the conspiracy claim, the Court noted that a plaintiff need not "plead specifically the time, place or date for a conspiratorial meeting," citing Babiarz v. Bell Atlantic-Pennsylvania. Inc.[51] The Court found that by pleading that the defendants had conspired to use company funds for personal use and over extended credit lines held in Burton's name, that this was sufficient to sustain Burton's pleading burden on the claim for conspiracy.

[51]2001 Phila. Ct. Com. Pl. LEXIS 94 (2001).

Freedom Med. Supply, Inc. v. Nationwide Mutual Ins. Co., May Term 2003, No. 03296, 2004 Phila. Ct. Com. Pl. LEXIS 35 (C.C.P. Phila. May 23, 2004) (Sheppard, J.)
This Opinion is available at http://fjd.phila.gov/pdf/cpcvcomprg/030503296.pdf.

Sigma Supplies Corp. v. Progressive Halcyon Ins., August Term 2003, No. 02968, 2004 Phila. Ct. Com. Pl. LEXIS 43 (C.C.P. Phila. May 23, 2004) (Sheppard, J.)
This Opinion is available at http://fjd.phila.gov/pdf/cpcvcomprg/030802968.pdf.

(the Court in both cases sustained an objection to the conspiracy counts of the complaints because there could be no conspiracy to violate a statute if one of the parties to the conspiracy could not legally violate the statute).

The above matters concerned claims for conspiracy to violate the Motor-Vehicle Financial Responsibility Law (MVFRL). Claims under the MVFRL may be brought only against insurers. In each case, the conspiracy claim was asserted against an insurer and Med Path, a bill processor retained by the Insurers. The Court dismissed the claim against Med Path because no MVFRL claim could be brought against Med Path, and thus it could not conspire to violate the MVFRL. In light of this dismissal, the Court dismissed the conspiracy claims against the Insurers in each case, as they could not conspire with themselves.

Nowicki v. First Union Nat'l Bank, April Term 2001, No. 2033, 2004 Phila. Ct. Com. Pl. LEXIS 110 (C.C.P. Phila. May 15, 2004) (Cohen, J.), aff'd w/o opinion, 872 A.2d 1280 (Pa. Super. 2005), appeal denied, 584 Pa. 678, 880 A.2d 1240 (2005) (the Court granted summary judgment and dismissed the conspiracy count of the complaint finding there was no global settlement agreement to conspire against and that plaintiffs had made only conclusory generalized allegations of conspiracy).
This Opinion is available at http://fjd.phila.gov/pdf/cpcvcomprg/010400763.pdf.

Plaintiffs, the Nowickis, alleged that the defendants, First Union Bank and Stockport Forrest Preservation, conspired to ensure the failure of a global agreement which would have enabled the Nowickis to reduce their debt and possibly retain their property which was in foreclosure. The Nowickis had purchased approximately 1,900 acres of land in Wayne County and executed a promissory note and mortgages. The Nowickis defaulted on the notes and First Union commenced foreclosure proceedings. The Nowickis alleged that there was an oral

agreement between them and First Union to resolve the issues based upon conversations between the Nowickis' lawyers and First Union.

The Court first found that no such global agreement existed. Further, the Court found that even if a global agreement were to exist, the Nowickis failed to adduce any evidence of the elements of the conspiracy. The Court cited to the Nowickis' failure to adduce any evidence of the individual elements of conspiracy and noted that they relied solely on generalized and conclusory allegations. Hence, the Court dismissed the claim for civil conspiracy on a summary judgment motion.

Malewicz v. Michael Baker Corp., December Term 2002, No. 1741, 2003 Phila. Ct. Com. Pl. LEXIS 49 (C.C.P. Phila. Aug. 6, 2003) (Jones, J.) (the Court denied preliminary objections to the conspiracy count of the complaint finding that a letter and a lawsuit were the combined action of the defendants and thus stated a claim for conspiracy).
This Opinion is available at http://fjd.phila.gov/pdf/cpcvcomprg/malewicz2.pdf.

The case involved an agreement between the plaintiff, Mobility, and the defendant, SFT, to merge; which agreement included a provision allowing Mobility to unilaterally terminate at any point without qualification. Following due diligence and disclosure of certain negative financial issues with SFT, Mobility exercised its right to unqualified termination and then merged with another company, SMS.

The complaint alleged that the defendants, shareholders of SFT conspired with defendant, Michael Baker Corp. ("MBC"), to extort money from Mobility to regain control of SFT. After the failed Mobility/SFT merger, MBC informed the SFT shareholders that Internet Capital had offered to invest money in Mobility. The SFT shareholders knew that claims of liability asserted during the course of Internet Capital's proposed financing of Mobility would disrupt or negate the financing. The complaint alleged that the SFT shareholders schemed to have their counsel

send a letter announcing a lawsuit against Mobility. Enclosed with the letter was a complaint to be filed in New Mexico against Mobility. Malewicz's complaint alleged that as a result, Internet Capital declined to invest in Mobility.

Concluding that the facts of the case pointed to an overt act, planned by more than two persons, for an unlawful purpose, which resulted in actual damages, the Court held that a conspiracy had been stated and overruled the preliminary objections.

Academy Plaza L.L.C.1 v. Bryant Asset Mgmt., May Term 2002, No. 2774, 2006 Phila. Ct. Com. Pl. LEXIS 238 (C.C.P. June 9, 2006) (Sheppard, J.) (Following a bench trial, the Court entered judgment in favor of the defendants on a conspiracy claim determining that related corporate entities could not conspire with each other).
This Opinion is available at http://fjd.phila.gov/pdf/cpcvcomprg/020502774.pdf.

Plaintiff, a real estate investment trust, executed an agreement for the sale of three shopping centers. Plaintiff argued that defendants fraudulently induced plaintiff to sign the agreement at an inflated price by intentionally overstating the net operating income for the shopping centers. The Court found in favor of plaintiff on the fraudulent inducement claim and entered judgment in the amount of $1.7 million.

The Court, however, ruled in favor of the defendants on the conspiracy claim. The Court found that the four defendants were unable to conspire. The Court, relying on Shared Communication Services,[52] noted that the Superior Court had concluded that the closer the relationship between a corporate parent and its subsidiaries, the more likely it is that they cannot be capable of conspiracy. Here, based on testimony as to the relationship of the defendants, the Court determined that the conspiracy claim failed.[53]

[52]692 A. 2d at 574.
[53]The parties filed post-trial motions which were decided by the Commerce Court, and the Court issued an opinion under Pa.R.A.P. 1925 after appeal. Academy Plaza L.L.C.1 v. Bryant Asset
(Continued…)

V-Tech Services, Inc. v. Murray Motors Co., Inc, February Term 2001, No. 1291, 2001 Pa. Dist. & Cnty. Dec. LEXIS 377, 54 Pa. D & C. 4th 281 (C.C. P. Phila 2001) (Herron, J.) (the Court overruled preliminary objections to conspiracy count of the complaint finding sufficient allegations of agreement to defraud, overt acts in furtherance of the conspiracy and damages). This Opinion is available at http://fjd.phila.gov/pdf/cpcvcomprg/vtechpo1.pdf.

The matter arose out of V-Tech's purchase of snow removal trucks from Murray and a promise of service by Murray and defendant U.S. Municipal. Following the purchase, complications arose with the trucks which prevented V-Tech from completing snow removal it had contracted to do for SEPTA, and SEPTA cancelled its contract with V-Tech. V-Tech filed a complaint asserting claims for breach of contract, fraud, breach of warranty and conspiracy.

Judge Herron overruled Murray's preliminary objection to the conspiracy count. Judge Herron noted that there was sufficient specificity pled. V-Tech alleged that Murray and U.S. Municipal agreed to defraud V-Tech and obtain secret profits at V-Tech's expense. The complaint also alleged that Murray's sales agents falsely depicted the suitability of the trucks and that U S Municipal deliberately or grossly negligently adapted the trucks. The complaint further alleged that V-Tech suffered damages. Judge Herron, citing Larsen v. Phila. Newspapers Inc,[54] noted that intent may be averred generally. Judge Herron concluded that the facts as pled were sufficient to state a claim for civil conspiracy.

(Continued…)

Mgmt., May Term 2002, No. 2774, 2007 Phila. Ct. Com. Pl. LEXIS 154 (C.C.P. May 21, 2007) (Sheppard, J.), aff'd in part, vac'd in part, w/o opinion, 959 A.2d 454 (Pa. Super. 2008). This opinion does not include any discussion of civil conspiracy as one of the issues on appeal.

[54] 411 Pa. Super. 534, 602 A.2d 324, 339 (1991), appeal denied, 537 Pa. 622, 641 A.2d 587 (1994).

Orianna Associates LLC v. Transamerica Occidental Life Companies, August Term 2003, No. 2250, 2007 Phila Ct. Com. Pl. LEXIS 158 (May 29, 2007) (Sheppard, J.) (the Court granted summary judgment and dismissed a conspiracy claim finding plaintiff failed to adduce evidence of any agreement and had only pled parallel conduct on the part of the defendants). This Opinion is available at http://fjd.phila.gov/pdf/cpcvcomprg/030802250.pdf.

These were consolidated cases following the death of Ralph Most ("Most") who was an active member/shareholder of various entities, including Orianna Associates (""Orianna") and various related entities known collectively as the JM Entities. Defendant Samuel Lehman was a shareholder of Orianna and the JM Entities. Most, Lehman and defendant, David Altman also held interests in Lenola Road Associates. Altman was also a creditor of the JM Entities.

The widow of Most brought claims seeking to have the JM entities repurchase Most's shares, repay loans made by Most to the JM Entities, release collateral and guaranties given by Most and return certain personal possessions of Most. The Estate also asserted claims against Altman for attempting to enforce a guaranty given by Most.

Altman moved to dismiss the Estate's and Mrs. Most's claims against him for breach of contract, declaratory judgment and civil conspiracy. Although the Court refused to dismiss the breach of contract claim, it did dismiss the conspiracy claim. The Court found that although Altman had an interest in having Most's shares valued low, the Estate had not offered any evidence to show that Altman had done anything to deflate the value of the shares or assist the JM Entities in valuing the shares lower than what they should be. The Court noted that although the JM Entities may have breached a shareholders' agreement and/or that Lehman may have breached his fiduciary duty, that these wrongful acts could not be imputed to Altman. The Court concluded that even if Altman concurrently breached the terms of the Guaranty, such separate wrongs did not constitute a conspiracy without proof of collusion. Because the Estate offered no proof of collusion, summary judgment on the conspiracy claim was granted.