

NAME SEARCHED: Harry Beller

PWM BIS-RESEARCH performed due diligence research in accordance with the standards set by AML Compliance for your business. We completed thorough searches on your subject name(s) in the required databases and have attached the search results under the correct heading below. Significant negative media results may require escalation to senior business, Legal and Compliance management. Also, all accounts involving PEPs must be escalated.

Search:	Result:	Click here for results:	Reviewer Comments (as necessary):
RDC	<input checked="" type="checkbox"/> No Hit <input type="checkbox"/> Not Required <input type="checkbox"/> Hit	I. RDC Results	No RDC alert (Please see attached)
PCR	<input checked="" type="checkbox"/> No Hit <input type="checkbox"/> Not Required <input type="checkbox"/> Hit	II. PCR Results	No PCR alert (Please see attached)
BIS	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Required	III. Negative Media	Result Found(please see attached)
		IV. Non-Negative Media	No Information found
		V. Other Language Media	Not Required
D&B	Results? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Not Required	VI. D&B	Not Required
Smartlinx	Results? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Required	VII. Smartlinx	Result Found(please see attached)
Court Cases	<input checked="" type="checkbox"/> Review by Legal May be Required <input type="checkbox"/> No Results <input type="checkbox"/> Search not required	VIII. Court Cases	Result Found(please see attached)

Prepared by: [REDACTED] Date:10/02/2013
Research Analyst

Instructions:

1. Review and confirm that all results are returned for your client.
2. Please note that you are still required to perform any Martindale-Hubbell search (if applicable) on each search subject. We have attached the web link below for your convenience: [Martindale-Hubbellhttp://www.martindale.com/xp/Martindale/home.xml](http://www.martindale.com/xp/Martindale/home.xml)
3. As needed, provide comment for any negative results.
4. If applicable, please obtain clearance from Compliance for all alerts.
5. Save any changes you make to this document and attach file to your KYC.

Please note: Submission of a signed KYC is your confirmation that you have fully reviewed the research documents.

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SDNY_GM_00064857

OFAC RESULTS

RDC:

██████████ No Match Found ██████████ Harry Beller Country: United States Date of Birth: ██████████

PCR:

██████████ Harry Beller ██████████ NCA customised Auto-Closed No-Hit 02/10/2013

BIS RESULTS

Negative Media:

Space Daily

June 25, 2010 Friday

Enzyme Trio For Biosynthesis Of Hydrocarbon Fuels

BYLINE: Staff Writers

LENGTH: 766 words

DATELINE: Berkeley CA (SPX) Jun 25, 2010, 2010

If concerns for global climate change and ever-increasing costs weren't enough, the disastrous Gulf oil spill makes an even more compelling case for the development of transportation fuels that are renewable, can be produced in a sustainable fashion, and do not put the environment at risk.

Liquid fuels derived from plant biomass have the potential to be used as direct replacements for gasoline, diesel and jet fuels if cost-effective means of commercial production can be found.

Researchers with the U.S. Department of Energy (DOE)'s Joint BioEnergy Institute (JBEI) have identified a trio of bacterial enzymes that can catalyze key steps in the conversion of plant sugars into hydrocarbon compounds for the production of green transportation fuels.

Harry Beller, an environmental microbiologist who directs the Biofuels Pathways department for JBEI's Fuels Synthesis Division, led a study in which a three-gene cluster from the bacterium *Micrococcus luteus* was introduced into the bacterium *Escherichia coli*.

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The enzymes produced by this trio of genes enabled the *E. coli* to synthesize from glucose long-chain alkene hydrocarbons. These long-chain alkenes can then be reduced in size - a process called "cracking" - to obtain shorter hydrocarbons that are compatible with today's engines and favored for the production of advanced lignocellulosic biofuels.

"In order to engineer microorganisms to make biofuels efficiently, we need to know the applicable gene sequences and specific metabolic steps involved in the biosynthesis pathway," Beller says. "We have now identified three genes encoding enzymes that are essential for the bacterial synthesis of alkenes. With this information we were able to convert an *E. coli* strain that normally cannot make long-chain alkenes into an alkene producer."

Working with Beller on this study were Ee-Been Goh and Jay Keasling. The three were the co-authors of a paper that appeared earlier this year in the journal *Applied and Environmental Microbiology*, titled "Genes Involved in Long-Chain Alkene Biosynthesis in *Micrococcus luteus*."

It has long been known that certain types of bacteria are able to synthesize aliphatic hydrocarbons, which makes them promising sources of the enzymes needed to convert lignocellulose into advanced biofuels. However, until recently, little was known about the bacterial biosynthesis of non-isoprenoid hydrocarbons beyond a hypothesis that fatty acids are precursors.

JBEI researchers in the Fuels Synthesis Division, which is headed by co-author Keasling, are using the tools of synthetic biology, and mathematical models of metabolism and gene regulation to engineer new microbes that can quickly and efficiently produce advanced biofuel molecules. *E. coli* is one of the model organisms being used in this effort because it is a well-studied microbe that is exceptionally amenable to genetic manipulation.

"We chose to work with *M. luteus* because a close bacterial relative was well-documented to synthesize alkenes and because a draft genome sequence of *M. luteus* was available," Beller says. "The first thing we did was to confirm that *M. luteus* also produces alkenes."

Beller and his colleagues worked from a hypothesis that known enzymes capable of catalyzing both decarboxylation and condensation should be good models for the kind of enzymes that might catalyze alkene synthesis from fatty acids.

Using condensing enzymes as models, the scientists identified several candidate genes in *M. luteus*, including *Mlut_13230*. When expressed in *E. coli* together with the two adjacent genes - *Mlut_13240* and *13250* - this trio of enzymes catalyzed the synthesis of alkenes from glucose. Observations were made both in vivo and in vitro.

"This group of enzymes can be used to make aliphatic hydrocarbons in an appropriate microbial host but the resulting alkenes are too long to be used directly as liquid fuels," Beller says. "However, these long-chain alkenes can be cracked - a technique routinely used in oil refineries - to create hydrocarbons of an appropriate length for diesel fuel."

The next step Beller says is to learn more about how these three enzymes work, particularly *Mlut_13230* (also called *OleA*), which catalyzes the key step in the alkene biosynthesis pathway - the condensation of fatty acids.

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"We're also studying other pathways that can produce aliphatic hydrocarbons of an appropriate length for diesel fuels without the need for cracking," Beller says. "Nature has devised a number of biocatalysts to produce hydrocarbons, and our goal is to learn more about them for the production of green transportation fuels."

LOAD-DATE: June 25, 2010

LANGUAGE: ENGLISH

PUBLICATION-TYPE: Web Publication

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Non-Negative Media:

No Information Found

Other Language Media:

Not Required

Public Records:

1 OF 1 RECORD(S)

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Full Name	Address	County	Phone
BELLER, HARRY I	[REDACTED] ROCKLAND COUNTY	ROCKLAND	[REDACTED]

ADDITIONAL PERSONAL INFORMATION

SSN	DOB	Gender	LexID(sm)
[REDACTED]	[REDACTED]		[REDACTED]

Subject Summary

Name Variations

- 1: BELIER, HARRY I
- 2: BELLER, HARRY
- 3: BELLER, HARRY I

SSNs Summary

No.	SSN	State Iss.	Date Iss.	Warnings

Most frequent SSN attributed to subject:

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1: [REDACTED] New York 1972-1974

DOBs

Reported DOBs:

[REDACTED]

Possible E-Mail Addresses

[REDACTED]

Address Summary - 4 records found

No. Address

1: [REDACTED]
ROCKLAND COUNTY

2: [REDACTED]
KINGS COUNTY

3: [REDACTED]
KINGS COUNTY

4: [REDACTED]
KINGS COUNTY

Address Details

[REDACTED]

Address

[REDACTED]

Dates

Phone

[REDACTED]

Other Associates

STERN SR, ROBERT M

[REDACTED]

Dates

Phone

[REDACTED]

Census Data for Geographical Region

Median Head of Household Age: 41
Median Income: \$42,198
Median Home Value: \$415,686

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Median Education: 14 years

Household Members

[REDACTED]

Other Associates

None Listed

[REDACTED]

Dates Phone

[REDACTED]

Census Data for Geographical Region

Median Head of Household Age: 43

Median Income: \$43,768

Median Home Value: \$597,222

Median Education: 14 years

Household Members

[REDACTED]

Other Associates

STERN SR, ROBERT M

[REDACTED]

Dates Phone

[REDACTED]

Census Data for Geographical Region

Median Head of Household Age: 31

Median Income: \$57,262

Median Home Value: \$534,091

Median Education: 13 years

Household Members

None Listed

Other Associates

None Listed

Voter Registrations - 1 records found

1: New York Voter Registration

Registrant Information

Name: [REDACTED]
Residential Address: [REDACTED]

Home Phone: [REDACTED]

SSN: [REDACTED]

Date of Birth: [REDACTED]

Gender: Male

Voter Information

Registration Date: 8/15/1996

Last Vote Date: 11/6/2012

Party Affiliation: [REDACTED]

Active Status: ACTIVE

Real Property - 3 records found

1: Assessment Record for ROCKLAND County, NY

Owner Information

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Name: [REDACTED]
Address: [REDACTED]
County/FIPS: [REDACTED]

Property Information

Address: [REDACTED]
County/FIPS: [REDACTED]
Data Source: B

Legal Information

Assessor's Parcel Number: 392689 56.05-3-46

Assessment Information

Assessed Value: \$86400
Total Market Value: \$24400

2: Assessment Record for ROCKLAND County, NY

Owner Information

Name: [REDACTED]
Address: [REDACTED]
County/FIPS: [REDACTED]

Property Information

Address: [REDACTED]
County/FIPS: ROCKLAND
Data Source: B

Legal Information

Assessor's Parcel Number: 392689 56.5-3-46

Assessment Information

Assessed Value: \$86400
Total Market Value: \$24400

3: Deed Record for ROCKLAND County

Buyer Information

Name: [REDACTED]
Name: [REDACTED]
Address: [REDACTED]
County/FIPS: [REDACTED]

Seller Information

Name: [REDACTED]
Address: [REDACTED]
County/FIPS: [REDACTED]

Property Information

Address: [REDACTED]
County/FIPS: ROCKLAND
Data Source: B

Lender Information

Name: ASTORIA FSLA

Legal Information

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Contract Date: 09/18/1995
Recording Date: 09/21/1995
Document Number: 950921225682
Document Type: DEED
Book/Page: 752/1993

Sale Information

Sale Price: \$290000

Mortgage Information

Loan Amount: \$150000
Title Company: CHICAGO TITLE

Motor Vehicle Registrations - 17 records found

1: NY MVR

Registrant Information

Registrant: BELLER, HARRY I
DOB: [REDACTED]
Address: [REDACTED]
ROCKLAND COUNTY

Registration Information

Original Registration Date: 12/17/2010
Registration Date: 12/17/2010
Registration Expiration Date: 12/16/2012

Vehicle Information

VIN: [REDACTED]
Class: PASSENGER CAR/LIGHT TRUCK
Model Year: 2011
Make: Honda
Model: Accord
Series: ACCORD EX
Body Style: Sedan 4 Door
Weight: 3296

Plate Information

License Plate Type: Private
License Plate Number: [REDACTED]
Plate State: NY

2: NY MVR

Vehicle Information

VIN: [REDACTED]
Class: PASSENGER CAR/LIGHT TRUCK
Model Year: 2011
Make: Honda
Model: Accord
Series: ACCORD EX
Body Style: Sedan 4 Door
Weight: 3296

Owner Information

Name: BELLER, HARRY I
DOB: [REDACTED]
Address: [REDACTED]
ROCKLAND COUNTY

Lienholder Information

Name: AMERICAN HONDA FINANCE CORP.
Address: 201 LITTLE FALLS DR
WILMINGTON, DE 19808-1674
NEW CASTLE COUNTY

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Title Information

Title Transfer Date: 1/7/2011
Title Issue Date: 1/7/2011

3: NY MVR

Registrant Information

Registrant: BELLER, HARRY I
DOB: [REDACTED]
Address: [REDACTED]
ROCKLAND COUNTY

Registration Information

Original Registration Date: 1/6/2006
Registration Date: 12/4/2009
Registration Expiration Date: 1/5/2012

Vehicle Information

VIN: [REDACTED]
Class: PASSENGER CAR/LIGHT TRUCK
Model Year: 2000
Make: Honda
Model: Odyssey
Series: ODYSSEY EX
Body Style: Sport Van
Weight: 4170

Plate Information

License Plate Type: Private
Previous Plate Number: [REDACTED]
Previous Plate State: NY
License Plate Number: [REDACTED]
Plate State: NY

4: NY MVR

Vehicle Information

VIN: [REDACTED]
Class: PASSENGER CAR/LIGHT TRUCK
Model Year: 2000
Make: Honda
Model: Odyssey
Series: ODYSSEY EX
Body Style: Sport Van
Weight: 4170

Owner Information

Name: BELLER, HARRY I
DOB: [REDACTED]
Address: [REDACTED]
ROCKLAND COUNTY

Title Information

Title Transfer Date: 2/3/2006
Title Issue Date: 2/3/2006

5: NY MVR

Registrant Information

Registrant: BELLER, HARRY I
DOB: [REDACTED]
Address: [REDACTED]
ROCKLAND COUNTY

Registration Information

Original Registration Date: 12/12/2007
Registration Date: 11/18/2009
Registration Expiration Date: 12/11/2011

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Vehicle Information

VIN: [REDACTED]
Class: PASSENGER CAR/LIGHT TRUCK
Model Year: 2004
Make: Nissan
Model: Altima
Series: ALTIMA/S/SL
Body Style: Sedan 4 Door
Color: Green
Weight: 2980

Plate Information

License Plate Type: Private
Previous Plate Number: [REDACTED]
Previous Plate State: NY
License Plate Number: [REDACTED]
Plate State: NY

6: NY MVR

Vehicle Information

VIN: [REDACTED]
Class: PASSENGER CAR/LIGHT TRUCK
Model Year: 2004
Make: Nissan
Model: Altima
Series: ALTIMA/S/SL
Body Style: Sedan 4 Door
Color: Green
Weight: 2980

Owner Information

Name: BELLER, HARRY I
DOB: [REDACTED]
Address: [REDACTED]
ROCKLAND COUNTY

Title Information

Title Transfer Date: 2/20/2008
Title Issue Date: 2/20/2008

7: NY MVR

Registrant Information

Registrant: BELLER, HARRY I
DOB: [REDACTED]
Address: [REDACTED]
ROCKLAND COUNTY

Registration Information

Original Registration Date: 10/5/2007
Registration Date: 9/3/2009
Registration Expiration Date: 10/4/2011

Vehicle Information

VIN: [REDACTED]
Class: PASSENGER CAR/LIGHT TRUCK
Model Year: 2007
Make: Honda
Model: Accord
Series: ACCORD VALUE PACKAGE
Body Style: Sedan 4 Door
Weight: 3100

Plate Information

License Plate Type: Private
Previous Plate Number: [REDACTED]
Previous Plate State: NY

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License Plate Number: [REDACTED]
Plate State: NY

8: NY MVR

Vehicle Information

VIN: [REDACTED]
Class: PASSENGER CAR/LIGHT TRUCK
Model Year: 2007
Make: Honda
Model: Accord
Series: ACCORD VALUE PACKAGE
Body Style: Sedan 4 Door
Weight: 3100

Owner Information

Name: BELLER, HARRY I
DOB: [REDACTED]
Address: [REDACTED]
ROCKLAND COUNTY

Title Information

Title Transfer Date: 11/2/2007
Title Issue Date: 11/2/2007

9: NY MVR

Registrant Information

Registrant: BELLER, HARRY I
DOB: [REDACTED]
Address: [REDACTED]
ROCKLAND COUNTY

Registration Information

Original Registration Date: 12/27/2004
Registration Date: 11/8/2006
Registration Expiration Date: 12/26/2008

Vehicle Information

VIN: [REDACTED]
Class: PASSENGER CAR/LIGHT TRUCK
Model Year: 2001
Make: Toyota
Model: Camry
Series: CAMRY CE/LE/XLE
Body Style: Sedan 4 Door

Plate Information

License Plate Type: Private
Previous Plate Number: [REDACTED]
Previous Plate State: NY
License Plate Number: [REDACTED]
Plate State: NY

10: NY MVR

Vehicle Information

VIN: [REDACTED]
Class: PASSENGER CAR/LIGHT TRUCK
Model Year: 2001
Make: Toyota
Model: Camry
Series: CAMRY CE/LE/XLE
Body Style: Sedan 4 Door

Owner Information

Name: BELLER, HARRY I
DOB: [REDACTED]
Address: [REDACTED]

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CONFIDENTIAL

[REDACTED]
ROCKLAND COUNTY

Title Information

Title Transfer Date: 1/31/2005
Title Issue Date: 1/31/2005

11: NY MVR

Registrant Information

Registrant: BELLER, HARRY I
DOB: [REDACTED]
Address: [REDACTED]

ROCKLAND COUNTY

Registration Information

Original Registration Date: 10/28/2004
Registration Date: 10/28/2004
Registration Expiration Date: 12/16/2006

Vehicle Information

VIN: [REDACTED]
Class: PASSENGER CAR/LIGHT TRUCK
Model Year: 1996
Make: Ford
Model: Windstar
Series: WINDSTAR WAGON
Body Style: Extended Sport Van
Weight: 3665

Plate Information

License Plate Type: Private
Previous Plate Number: [REDACTED]
Previous Plate State: NY
License Plate Number: [REDACTED]
Plate State: NY

12: NY MVR

Vehicle Information

VIN: [REDACTED]
Class: PASSENGER CAR/LIGHT TRUCK
Model Year: 1996
Make: Ford
Model: Windstar
Series: WINDSTAR WAGON
Body Style: Extended Sport Van
Weight: 3665

Owner Information

Name: BELLER, HARRY I
DOB: [REDACTED]
Address: [REDACTED]

ROCKLAND COUNTY

Lienholder Information

Name: VALLEY NATIONAL BANK
Address: 1445 VALLEY RD
WAYNE, NJ 07470-2088
PASSAIC COUNTY

Title Information

Title Transfer Date: 1/21/1999
Title Issue Date: 1/21/1999

13: NY MVR

Registrant Information

Registrant: BELLER, HARRY I
DOB: [REDACTED]

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CONFIDENTIAL

Address: [REDACTED]
ROCKLAND COUNTY

Registration Information

Original Registration Date: 12/30/2002
Registration Date: 12/30/2002
Registration Expiration Date: 1/29/2005

Vehicle Information

VIN: [REDACTED]
Class: PASSENGER CAR/LIGHT TRUCK
Model Year: 1993
Make: Toyota
Model: Camry
Series: CAMRY XLE
Body Style: Sedan 4 Door

Plate Information

License Plate Type: Private
Previous Plate Number: [REDACTED]
Previous Plate State: NY
License Plate Number: [REDACTED]
Plate State: NY

14: NY MVR

Vehicle Information

VIN: [REDACTED]
Class: PASSENGER CAR/LIGHT TRUCK
Model Year: 1993
Make: Toyota
Model: Camry
Series: CAMRY XLE
Body Style: Sedan 4 Door

Owner Information

Name: BELLER, HARRY I
DOB: [REDACTED]
Address: [REDACTED]
ROCKLAND COUNTY

Title Information

Title Transfer Date: 3/1/2001
Title Issue Date: 3/1/2001

15: NY MVR

Registrant Information

Registrant: BELLER, HARRY I
DOB: [REDACTED]
Address: [REDACTED]
ROCKLAND COUNTY

Registration Information

Original Registration Date: 1/3/2000
Registration Date: 1/3/2000
Registration Expiration Date: 1/24/2002

Vehicle Information

VIN: [REDACTED]
Class: PASSENGER CAR/LIGHT TRUCK
Model Year: 1987
Make: Nissan
Model: Sentra
Series: SENTRA
Body Style: Station Wagon

Plate Information

License Plate Type: Private

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Previous Plate Number: [REDACTED]
Previous Plate State: NY
License Plate Number: [REDACTED]
Plate State: NY

16: NY MVR

Vehicle Information

VIN: [REDACTED]
Class: PASSENGER CAR/LIGHT TRUCK
Model Year: 1987
Make: Nissan
Model: Sentra
Series: SENTRA
Body Style: Station Wagon

Owner Information

Name: BELLER, HARRY I
DOB: [REDACTED]
Address: [REDACTED]
ROCKLAND COUNTY

Title Information

Title Transfer Date: 1/2/1998
Title Issue Date: 1/2/1998

17: NY MVR

Registrant Information

Registrant: BELLER, HARRY I
DOB: [REDACTED]
Address: [REDACTED]
ROCKLAND COUNTY

Registration Information

Original Registration Date: 3/31/1997
Registration Date: 3/31/1997
Registration Expiration Date: 5/6/1999

Vehicle Information

VIN: [REDACTED]
Class: PASSENGER CAR/LIGHT TRUCK
Model Year: 1988
Make: Pontiac
Model: 6000
Series: 6000 LE
Body Style: Station Wagon
Weight: 3550

Plate Information

License Plate Type: Private
License Plate Number: [REDACTED]
Plate State: NY

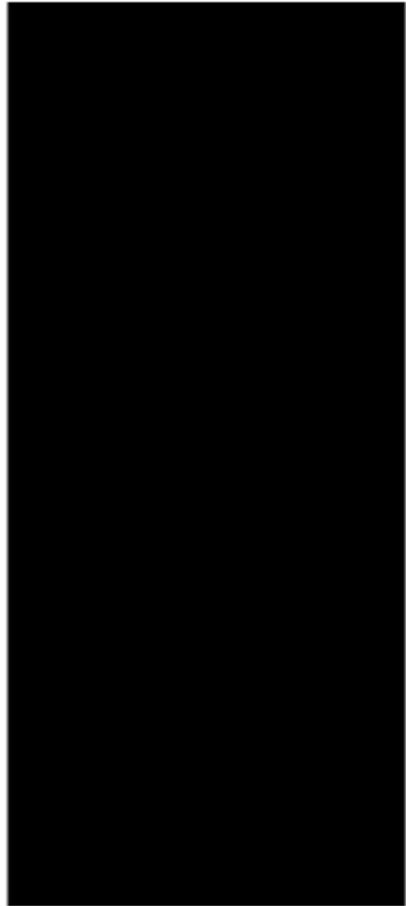
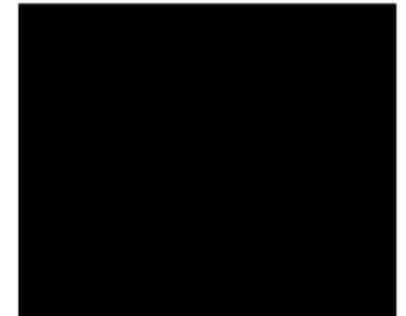
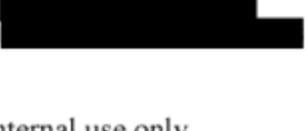
Potential Relatives - 10 records found

1st Degree: 9, 2nd Degree: 1

No.	Full Name	Address/Phone
1.	[REDACTED] SSN: [REDACTED] DOB: [REDACTED] ([REDACTED])	[REDACTED] [REDACTED]

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No.	Full Name	Address/Phone
		
2.		
3.		
4.		
5.		
6.		
7.		
		
8.		
		
		
		

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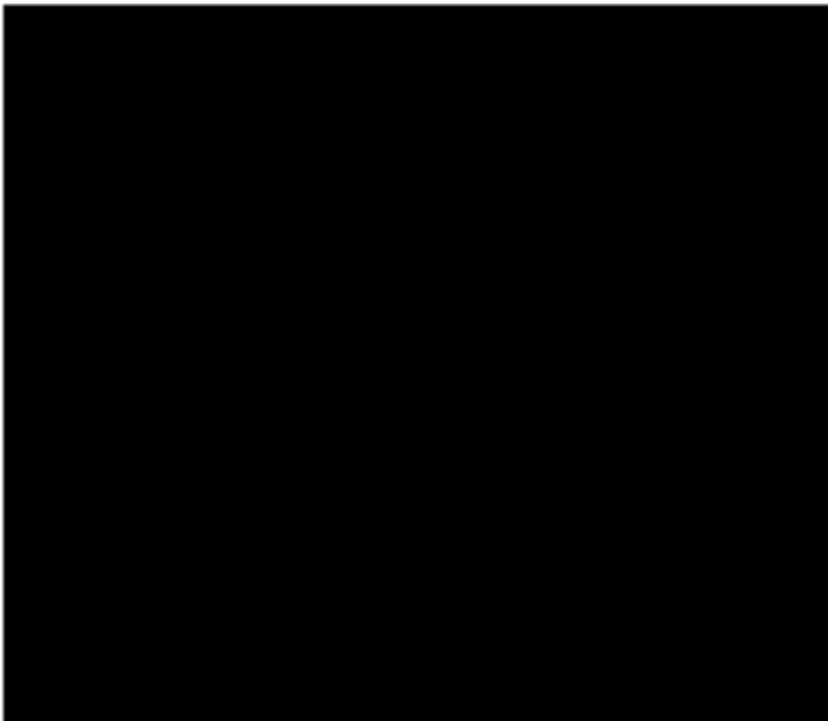
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DB-SDNY-0027696
EFTA_00175372

EFTA01299164

No. Full Name Address/Phone

8.A.



9.

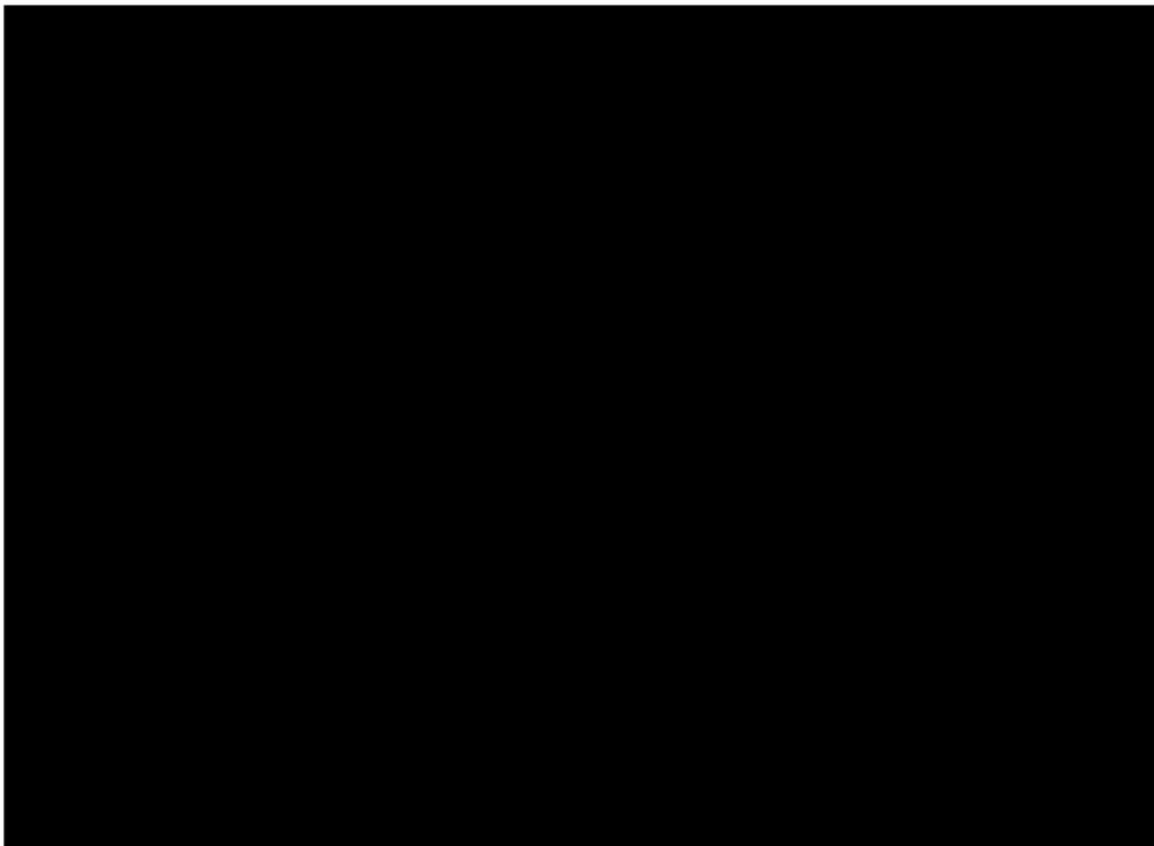
Person Associates - 5 records found

No. Full Name Address SSN Phone DOB

1:

2:

3:



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No.	Full Name	Address	SSN	Phone	DOB
4:	[REDACTED]				
5:					

Neighbors - 10 records found

Name	Address	Phone
[REDACTED]	[REDACTED]	[REDACTED]

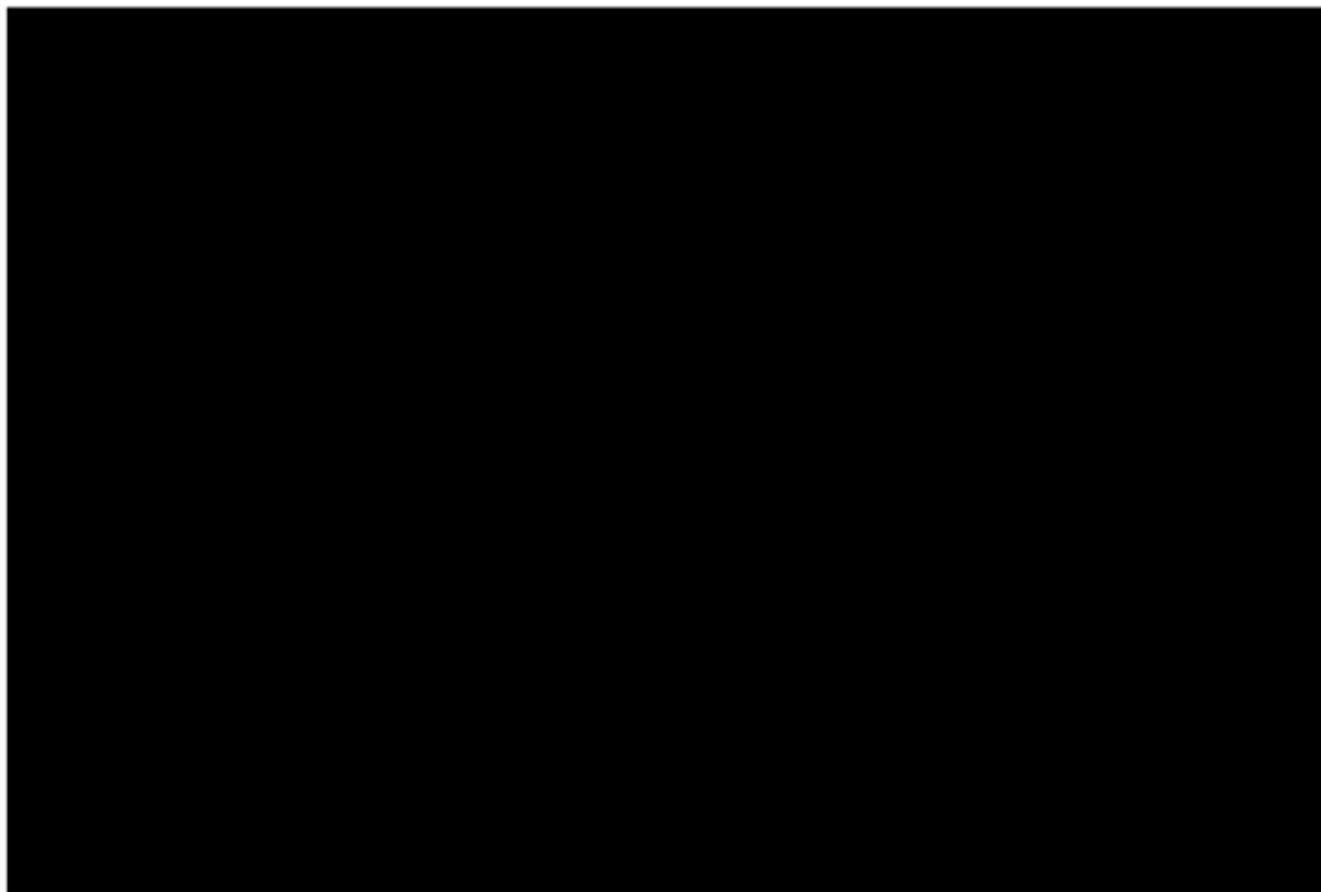
For internal use only

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DB-SDNY-0027698
EFTA_00175374

EFTA01299166



Employment - 1 records found

1:

Company Name: CITIBANK
 Name: BELLER, HARRY I
 SSN: [REDACTED]
 Confidence: Medium

Sources - 77 records found

All Sources	77 Source Document(s)
Deed Transfers	3 Source Document(s)
Email addresses	2 Source Document(s)
Historical Person Locator	4 Source Document(s)
Motor Vehicle Registrations	28 Source Document(s)
Person Locator 1	2 Source Document(s)
Person Locator 2	9 Source Document(s)
Person Locator 4	1 Source Document(s)
Person Locator 5	7 Source Document(s)
Person Locator 6	4 Source Document(s)
Phone	3 Source Document(s)
Tax Assessor Records	13 Source Document(s)
Voter Registrations	1 Source Document(s)

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DB-SDNY-0027699

EFTA_00175375

EFTA01299167

Your GLBA Permissible Use is: Legal Compliance

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D&B:

Not Required

LEGAL RESULTS:

Court Cases:

***** THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY *****

SUPREME COURT CIVIL SUITS FOR KINGS COUNTY, NEW YORK

CASE-NAME: BELLER,ANNA & HARRY BELLER

v.

CITY WILLETS POINT CONTRACTING CORP., & FRAND MASCALI CONTRACTING CO., INC

STATUS: DISPOSED ON 06/30/1987; SETTLED BEFORE TRIAL

ACTION: OTHER TORTS NEGLIGENCE

REQUEST FOR JUDICIAL INTERVENTION: 02/25/1986

NOTE OF ISSUE FILED: 02/21/1986

INDEX-NUMBER: 0155871983

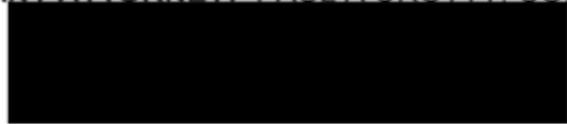
JURY REQUESTED BY: PLAINTIFF

JUDGE: PART 25 - JAMES W. HUTCHERSON

PLAINTIFF ATTORNEY: ROSENBERG & HOROWITZ, S & H



DEFENDANT ATTORNEY: PAUL A CROTTY, CORP COUNSEL



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BELLER, ANNA v. CITY

Mark H. FELDMAN pro se, Plaintiff, v. JACKSON MEMORIAL
HOSPITAL, etc., et al., Defendants

No. 79-758-Civ.-JWK

UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF FLORIDA

509 F. Supp. 815; 1981 U.S. Dist. LEXIS 11119; 1981-2 Trade
Cas. (CCH) P64,165

February 23, 1981

SUBSEQUENT HISTORY: [**1] As Corrected March 17, 1981.

CASE SUMMARY:

PROCEDURAL POSTURE: Defendants moved the court to dismiss plaintiff's complaint, which alleged violations of 42 U.S.C.S. §§ 1983, 1985, and 1986, and 15 U.S.C.S. §§ 1 and 2.

OVERVIEW: Plaintiff was denied membership on the medical staff, a privilege granted to most licensed physicians. He sued defendants, alleging that they had willfully and maliciously acted to prevent him from practicing podiatry in certain public and private hospitals by withholding that privilege. Specifically, he alleged that defendants' actions had deprived him of his civil rights in violation of 42 U.S.C.S. §§ 1983, 1985, and 1986; he also argued that their behavior violated 15 U.S.C.S. §§ 1 and 2 as a conspiracy in restraint of trade. Defendants moved the court for dismissal. Noting that pro se pleadings mandated a more lenient standard, the court held that dismissal of plaintiff's antitrust claims would have been premature. Accordingly, the court determined that it would determine the substance of plaintiff's antitrust allegations after he had been afforded an opportunity to conduct limited discovery into the issues, and to reply to the objections then raised by defendants. Finding no federal right to membership on a hospital staff, the court granted defendants' motion with respect to the civil rights allegations.

OUTCOME: The court concluded that plaintiff had no cognizable claim that his civil rights had been violated, but refused to dismiss his complaint as to his antitrust claim. Defendants' motion was thus granted in part and denied in part.

CORE TERMS: interstate commerce, SHERMAN ACT, podiatrist, conspiracy, staff, administrators, orthopedic, jurisdictional, patients, doctors, medical staff, private hospitals,

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509 F. Supp. 815, *; 1981 U.S. Dist. LEXIS 11119, **;
1981-2 Trade Cas. (CCH) P64,165

membership, podiatry, cause of action, civil rights, federal right, deprived, training, state law, pro se, involvement, class-based, profession, interstate, antitrust, invidious, licensed, nexus, color

LexisNexis(R) Headnotes

Civil Procedure > Pleading & Practice > Defenses, Demurrers & Objections > Motions to Dismiss

[HN1] When determining a motion to dismiss, courts are obliged to construe all of the material allegations contained in the complaint in the light most favorable to the plaintiff with those allegations accepted as true.

Civil Procedure > Pleading & Practice > Defenses, Demurrers & Objections > Motions to Dismiss

[HN2] Dismissal of an action on a bare-bones pleading should always be carefully and deliberately considered since it is a precarious option with a high mortality rate.

Civil Procedure > Parties > Self-Representation > Pleading Standards

[HN3] Pro se pleadings are to be held to a less stringent standard than those drafted by an attorney.

Civil Procedure > Pleading & Practice > Defenses, Demurrers & Objections > Motions to Dismiss

Civil Procedure > Pleading & Practice > Pleadings > Complaints > Requirements

[HN4] Fed. R. Civ. P. 8(a) enunciates the general standard that a pleading must meet in order to withstand a motion to dismiss. The pleader is entitled to considerable latitude regarding the mode of stating his claim for relief, provided the pleading gives reasonable notice of the claim or claims asserted.

Constitutional Law > Congressional Duties & Powers > Commerce Clause > Interstate Commerce > General Overview

Healthcare Law > Antitrust Actions > Facilities

Transportation Law > Interstate Commerce > Federal Powers

[HN5] The general scope of the Sherman Act ("Act"), 15 U.S.C.S. § 1, et seq., encompasses the entire regulatory power granted congress under the commerce clause. Although the Act includes more than simply a restraint on trade motivated by a desire to limit interstate commerce, federal enforcement must turn initially on whether or not the acts alleged in the complaint could likely have a substantial and adverse effect upon interstate commerce.

Antitrust & Trade Law > Sherman Act > Jurisdiction

[HN6] Even a wholly intrastate activity may be regulated by the Sherman Act, 15 U.S.C.S. § 1 et seq., where that activity would place an unreasonable burden on the free and uninterrupted flow of interstate commerce.

Civil Rights Law > Section 1983 Actions > Scope

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509 F. Supp. 815, *, 1981 U.S. Dist. LEXIS 11119, **;
1981-2 Trade Cas. (CCH) P64,165

[HN7] In order to sustain a 42 U.S.C.S. § 1983 claim, plaintiff must allege: that the defendants deprived him of some right secured by the United States Constitution or laws of the United States and that the defendants acted under color of state law.

Civil Rights Law > Section 1983 Actions > Elements > Protected Parties

Civil Rights Law > Section 1983 Actions > Scope

[HN8] Both elements of a 42 U.S.C.S. § 1983 action must be alleged and proven before relief can be forthcoming.

Civil Rights Law > Section 1983 Actions > Elements > Color of State Law > General Overview

Healthcare Law > Actions Against Healthcare Workers > General Overview

[HN9] Private entities are subject to the civil rights laws only if their activities are significantly affected with state involvement.

Civil Rights Law > Section 1983 Actions > Scope

[HN10] A private hospital is subject to the provisions of 42 U.S.C.S. § 1983 and U.S. Const. amend. XIV only if its activities are significantly affected with state involvement.

Civil Rights Law > Private Discrimination

Civil Rights Law > Section 1983 Actions > Scope

[HN11] Title 42 U.S.C.S. § 1983 and U.S. Const. amend. XIV do not preclude invidious discrimination by private parties.

Civil Rights Law > Section 1983 Actions > Elements > Color of State Law > General Overview

[HN12] The mere existence of some government tie to a private organization is not sufficient to support a finding of state action where the state has not sufficiently involved itself in the invidious discrimination. Moreover, the state must be involved in more than some activity of the offending institution itself, it must have been involved with the activity that caused the injury to plaintiff.

Civil Rights Law > Section 1983 Actions > Elements > Color of State Law > General Overview

[HN13] The mere fact that a business is subject to state regulation does not by itself convert its action into that of the state for purposes of U.S. Const. amend. XIV.

Civil Rights Law > Conspiracy > Knowing Nonprevention

[HN14] No claim for relief will lie under 42 U.S.C.S. § 1986 until a valid claim has been established under 42 U.S.C.S. § 1985.

COUNSEL: Mark H. Feldman, pro se.

J. Elisabeth Middlebrooks, Richard B. Adams, A. Blackwell Stieglitz, Miami, Fla., for defendants.

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OPINION BY: KEHOE**OPINION****[*816] MEMORANDUM ORDER ON MOTION TO DISMISS**

Mark H. Feldman, a licensed podiatrist, has filed this pro se action against multiple defendants, including many physicians, hospitals [*817] and medical administrators located in the southern Florida geographical area. Central to plaintiff's cause is his allegation that the defendants have willfully and maliciously acted to prevent him from practicing podiatry¹ in certain public and private hospitals by denying him membership on the medical staff normally granted licensed physicians. Plaintiff alleges that the defendants' actions have amounted to a conspiracy in restraint of trade and that they have deprived him of his constitutionally guaranteed civil rights.

1. "The diagnosis and treatment of foot disorders." J. Schmidt, Attorneys' Dictionary of Medicine and Word Finder (1980).

[**2] Plaintiff's original 54 page Complaint was dismissed without prejudice on the grounds that it was repetitious, redundant and violated rules 8 and 10 of the Federal Rules of Civil Procedure. Plaintiff was subsequently permitted to amend his Complaint and filed an Amended Complaint considerably abridged to 14 pages. The defendants have responded to the Amended Complaint by renewing their original joint motion to dismiss pursuant to Fed.R.Civ.P. 12(b) and adopting the arguments (with some supplementation) contained therein. They contend that, notwithstanding its newly condensed format, the Amended Complaint remains incurably defective since, inter alia, the Court lacks jurisdiction over the subject matter of the action, and it fails to state a claim upon which relief can be granted.

The Court reserved ruling on the matter until the defendants had an opportunity to depose the plaintiff in order to ascertain more fully the specific allegations underlying his cause of action. Plaintiff has now been deposed and accordingly, the motion to dismiss is ripe for consideration by the Court.

I. THE STANDARD BY WHICH THE AMENDED COMPLAINT MUST BE MEASURED

Plaintiff's Amended Complaint is [**3] directed against numerous parties, among them various doctors, medical administrators, public and private hospitals.² Plaintiff [*818] alleges: (a) that certain defendant physicians conspired with the defendant hospitals to prevent him from competing in the medical marketplace by arbitrarily rejecting his application to practice podiatry in those hospitals; (b) that the defendants conspired to ruin plaintiff's podiatry practice and drive him out of business; (c) that the defendants interfered with plaintiff's right to practice his chosen profession and to contract with patients regarding medical services; (d) that the defendants maliciously discriminated against him solely because he is a podiatrist and not a physician; and (e) that the defendants generally violated his civil rights. Plaintiff seeks a judgment from the Court which would primarily rule that he cannot be denied membership on the staff of the defendant hospitals, that would allow him the use of the medical facilities of those hospitals, and that would enjoin the

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509 F. Supp. 815, *, 1981 U.S. Dist. LEXIS 11119, **,
1981-2 Trade Cas. (CCH) P64,165

defendants from controlling or regulating the practice of podiatry in any way. Plaintiff also seeks compensatory and punitive damages totaling 50 million **[**4]** dollars.

2. The Amended Complaint contains the following list of defendants: Jackson Memorial Hospital; The Board of Trustees, Public Health Trust of Dade County, Florida; Fred J. Crowell, President, Public Health Trust; William W. Cleveland, M.D., President of the Medical Staff; Robert Zeppa, M.D., Chief of Surgery; William McCollough, M.D., Chief of Orthopedics; Agosto Sarmiento, M.D.; Wallace Miller, M.D.; Harry Berrer, M.D.; Alan Cohen, M.D.; Edward Cullipher, M.D.; Harvey Grable, M.D.; Ledford Gregory, M.D.; Michael Gurver, M.D.; Marshall Hall, M.D.; Claude Holmes, M.D.; Arthur Pearl, M.D.; Salvador Ramirez, M.D.; Thomas Samartino, M.D.; Mario Stone, M.D.; William Terheyden, M.D.; Samuel Turek, M.D.; and Cedars of Lebanon Hospital Corp., Inc.; and Cedars of Lebanon Hospital Care Center, Inc.; Dr. Jay Ziskind; Rufus Broadaway, M.D., Chief of Surgery; Marshall Hall, M.D., Chief of Orthopedics; Eugene Konrad, M.D., Chief of the Medical Staff; Harry Beller, M.D.; Alan B. Cohen, M.D.; Edward Cullipher, M.D.; Harvey Grable, M.D.; Salvador Ramirez, M.D.; Mario Stone, M.D.; and Mount Sinai Medical Center, Inc.; Alvin Goldberg, Executive Director; Harold Glick, M.D., Chief of the Medical Staff; Charles Weiss, M.D., Chief of Orthopedics; Sheldon Marne, D.P.M., Podiatrist; Mario Stone, M.D.; Samuel Turek, M.D.; Alvin Tobis, M.D.; Lester Russin, M.D.; and South Broward Hospital District, Memorial Hospital of Hollywood, Inc.; Maynard Abrams, Chairman, South Broward Hospital District; S.A. Mudano, Administrator; Robert Berger, M.D., Chief of Staff; Harry Fisher, M.D., Chief of Orthopedics; Paul Baxt, M.D.; Larry Rosenbaum, M.D.; Alfonso Petty, M.D.; George Crane, M.D.; Robert Niles, M.D.; North Broward Hospital District, Inc.; North Broward Hospital District Board of Commissioners; Hamilton Forman, Chairman; Bernie Welch, District Director and Hospital Administrator; Broward General Medical Center, Inc.; George F. Rahilly, M.D., Chief of Staff and Orthopedic Surgeon; and North Broward Hospital, Inc.; Robert L. Kennedy, Administrator; B. McNierney, M.D.; J. Gamble, M.D.; Niles Lestrangle, M.D.; Peter Sciarrett, M.D.; Wylie Scott, M.D.; and Florida Medical Center Hospital, Inc.; Maxwell Dauer, Ph.D.; Frank Stein, M.D.; Alvin Stein, M.D.; Gary Krulik, M.D.; and Bennett Community Hospital, Inc.; and Holy Cross Hospital, Inc.; and North Beach Medical Center, Inc.; and Pembroke Pines General Hospital, Inc.; David Drant, M.D.; Martin Medelson, M.D.; Alfonso Petti, M.D.; Robert Bronfman, M.D.; Neil Beinhaker, M.D.; Larry Rosenbaum, M.D.; and Imperial Point Hospital, Inc.; George F. Rahilly, M.D.; Sidney Cole, M.D.; Doctors General Hospital, Inc.; D. L. Gross, Administrator; E. Rockwood, D.O.; International Hospital, Inc.; John Silver, Administrator; and North Miami General Hospital, Inc.; Robert Bruce, Administrator; Lloyd Moriber, M.D., Chief of Orthopedics; Melvyn Drucker, M.D.; and Cypress Community Hospital, Inc.; Barry Schochet, Administrator; and North Ridge General Hospital, Inc.; David Cornell, Administrator. Some of the defendants have been listed more than once in the style of the Amended Complaint.

One of the contentions raised by the defendants in their joint motion to dismiss is that not all defendants have been properly served. The Court will reserve ruling on the service aspects of the motion to dismiss.

[5]** Plaintiff invokes the Court's jurisdiction under 28 U.S.C. §§ 1343, 2201, 2202, 15 U.S.C. §§ 15, 26, and 42 U.S.C. §§ 1983, 1985 and 1986. The Court has jurisdiction to decide all of the issues raised by the motion to dismiss.

[HN1] When determining a motion to dismiss, of course, the Court is obliged to construe all of the material allegations contained in the Amended Complaint in the light most favorable to the plaintiff with those allegations accepted as true. See, e.g., *Jenkins v. McKeithen*, 395 U.S. 411, 89 S. Ct. 1843, 23 L. Ed. 2d 404 (1969); *Voter Information Project v. City of Baton Rouge*, 612 F.2d 208 (5th Cir. 1980); 5 *Wright & Miller, Federal Practice and Procedure: Civil § 1363* (1969). Moreover, [HN2] dismissal of an action on a barebones pleading should always be carefully and deliberately considered since it is a precarious option with a high mortality rate. *Voter Information Project*, supra; *Barber v. M/V "Blue Cat"*, 372 F.2d 626 (5th Cir. 1967).

Plaintiff has proceeded pro se with his action from its inception despite the Court's admonition that the assistance of counsel would be highly beneficial in this case, a cause involving several subtle and complex issues of law. **[**6]** In considering the motion to dismiss, however, the Court has not penalized plaintiff for proceeding in his own behalf where the law mandates that [HN3] pro se pleadings are to be held to a less stringent standard than those drafted by an attorney. *Haines v. Kerner*, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972); *Craft v. Texas Board of Pardons & Paroles*, 550 F.2d 1054 (5th Cir.), cert. denied, 434 U.S. 926, 98 S. Ct. 408, 54 L. Ed. 2d 285 (1977); *Shaw v. Briscoe*, 541 F.2d 489 (5th Cir. 1976), cert. denied, 430 U.S. 933, 97 S. Ct. 1556, 51 L. Ed. 2d 778

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509 F. Supp. 815, *; 1981 U.S. Dist. LEXIS 11119, **;
1981-2 Trade Cas. (CCH) P64,165

(1977); Bruce v. Wade, 537 F.2d 850 (5th Cir. 1976); Williams v. McCall, 531 F.2d 1247 (5th Cir. 1976); Cook v. Whiteside, 505 F.2d 32 (5th Cir. 1974).³ Indeed, the Court finds plaintiff's Amended Complaint to be rather skillfully drafted when considering the complex issues raised and the fact that plaintiff has no prior legal experience.

3. Although these cases all arise in the context of prisoner pro se pleadings, the same standard should apply to a nonprisoner plaintiff where he chooses to proceed in his own behalf.

[7]** Following the guidance of these fundamental principles, the Court has conducted a careful review of the Amended Complaint and concludes that plaintiff is unable to state a claim upon which relief can be granted as to that portion of the Amended Complaint asserting violations of his civil rights. As for the remainder of the Amended Complaint alleging antitrust violations, **[*819]** the Court concludes that it would be premature to dismiss at the present stage of the proceedings. A discussion of the rationale behind this determination is in order.

II. GENERAL PLEADING REQUIREMENTS

[HN4] Fed.R.Civ.P. 8(a) enunciates the general standard that a pleading must meet in order to withstand a motion to dismiss. The pleader is entitled to considerable latitude regarding the mode of stating his claim for relief, provided the pleading gives reasonable notice of the claim or claims asserted. The Court considers the Amended Complaint amply sufficient to meet the general notice requirements of Rule 8 by adequately setting forth a claim and giving the defendants fair notice of its basis. Conley v. Gibson, 355 U.S. 41, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957); 5 Wright & Miller, Federal Practice and **[**8]** Procedure : Civil §§ 1216, 1217, 1286 (1969).⁴

4. Out of an abundance of caution and at the defendants' request, the Court ordered plaintiff deposed in order that the underlying nature of his claim was more readily understood. As a result, the defendants were fully apprised of the nature of this claim.

III. SHERMAN ACT ALLEGATIONS

The Sherman Act, 15 U.S.C. § 1 et seq., was enacted in 1890 to prohibit combinations and conspiracies in restraint of trade (Section 1), and to regulate monopolies (Section 2). Federal jurisdiction is predicated upon an allegation that the actions of the defendant have some nexus or connection with interstate commerce. Before the federal court can acquire jurisdiction, a plaintiff must show that the defendant's actions substantially and adversely affect interstate commerce. Failure to satisfy this threshold jurisdictional prerequisite will result in the dismissal of the complaint.

[HN5] The general scope of the Sherman Act encompasses the entire regulatory power granted Congress **[**9]** under the Commerce Clause. Apex Hosiery Company v. Leader, 310 U.S. 469, 60 S. Ct. 982, 84 L. Ed. 1311 (1940). Although the act includes more than simply a restraint on trade motivated by a desire to limit interstate commerce, federal enforcement must turn initially on whether or not the acts alleged in the complaint could

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509 F. Supp. 815, *, 1981 U.S. Dist. LEXIS 11119, **;
1981-2 Trade Cas. (CCH) P64,165

likely have a substantial and adverse effect upon interstate commerce. Hospital Building Company v. Trustees of Rex Hospital, 425 U.S. 738, 96 S. Ct. 1848, 48 L. Ed. 2d 338 (1976); Gulf Oil Corp. v. Copp Paving Co., 419 U.S. 186, 95 S. Ct. 392, 42 L. Ed. 2d 378 (1974); Burke v. Ford, 389 U.S. 320, 88 S. Ct. 443, 19 L. Ed. 2d 554 (1967). If so, [HN6] even a wholly intrastate activity may be regulated by the Sherman Act where that activity would place an unreasonable burden on the "free and uninterrupted flow of interstate commerce." Rex Hospital, supra, 96 S. Ct. at 1853. As one commentator described the jurisdictional test to be applied in determining the sufficiency of a Sherman Act complaint:

[The] test applies when the challenged conduct is not "in commerce," it will nevertheless be subject to the Act if it materially affects interstate commerce. In deciding [**10] these issues, quantitative factors become pertinent. It is necessary not only that there be a logical causal connection between the activity and the flow of commerce, it is also necessary that the flow of commerce be affected in some substantial way; if the impact is trivial, the Sherman Act does not apply. Thus, the only commercial activities beyond the reach of the Sherman Act are those which are local in the double sense that they are neither within nor have any significant effect on the flow of interstate commerce. (footnotes omitted)

L. Sullivan, The Law of Antitrust (1977), § 233 at 710.

Plaintiff's allegations respecting interstate commerce are contained in paragraphs 24 through 28 of the Amended Complaint:

24. A significant number of patients, actual and potential of the plaintiff and defendant doctors and hospitals, are covered by the Federal Medicare and State Medicaid Programs. Treatment of those patients generates millions of dollars of interstate revenue.

[**820] 25. Defendant hospitals annually receive millions of dollars from insurance companies located outside of Florida for medical and surgical services provided by defendant [**11] hospitals and doctors to non permanent nonresident patients.

26. Defendant doctors and hospitals purchase millions of dollars of supplies and equipment from sources outside of the state.

27. Rules and regulations promulgated by defendant doctors and hospitals to control the practice of Podiatrists, by limiting the privileges, refusing admittance, came from out of state sources (sic), as in the instance of defendant Jackson Memorial Hospital, whose GUIDELINES FOR PODIATRY came from THE DEPARTMENT OF ORTHOPEDIC SURGERY at the Massachusetts General Hospital in Boston, Mass.

28. Cessation and interruption of Podiatry Clinics and Training programs in defendant hospitals denied to out of state Podiatrists essential surgical training necessary to compete for surgical patients in their home States. Elimination of said training programs by defendant hospitals and orthopedic surgeons prevented out of state Podiatrists from coming to Florida specifically for such surgical training programs.

Plaintiff's first jurisdictional hurdle is to establish the required nexus between the defendants' challenged activity and interstate commerce. It is this Court's [**12] determination that plaintiff has met this burden and properly invokes the Court's jurisdiction under the Sherman Act.

The restraint that plaintiff opposes in his action is that involving an alleged conspiracy by the defendants to deny podiatrists in general, ⁵ and the plaintiff in particular, a certain kind of access to hospital facilities, that access accorded members of the hospital's medical staff. Membership in the medical staff is usually limited to licensed physicians.

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509 F. Supp. 815, *; 1981 U.S. Dist. LEXIS 11119, **;
1981-2 Trade Cas. (CCH) P64,165

5. There are no class action allegations contained in the Amended Complaint.

The hospitals involved in this action furnish medical care and services to the community in a variety of ways: by caring for patients, training doctors and staff personnel, developing research facilities, and extending staff privileges to private physicians. Much of this activity happens to spill across the boundaries of Florida and into the stream of interstate commerce.

It is this activity of providing medical care to patients that the defendants allegedly **[**13]** seek to exclude plaintiff from participation and involvement. It is this activity that must be connected with interstate commerce in order to sustain jurisdiction. Plaintiff must establish that the medical services supplied by the defendants have the required effect on interstate commerce. He is not required to show that the alleged conspiratorial actions of the defendants have any connection with interstate commerce. To rule otherwise would vitiate the intended scope of the law and impose an insuperable burden upon a plaintiff alleging an anticompetition conspiracy. Such a conspiracy would seldom reach interstate proportions though the object of the conspiracy might be federal in scope.

The Court's conclusion that the Amended Complaint is jurisdictionally sound is supported by the recent decision of *McLain v. Real Estate Board of New Orleans*, 444 U.S. 232, 100 S. Ct. 502, 62 L. Ed. 2d 441 (1980), in which the Supreme Court held that the district court erred in dismissing a complaint which alleged a price fixing conspiracy involving several Louisiana real estate brokerage firms. The Court stated that the plaintiff could establish the requisite jurisdiction under the Sherman **[**14]** Act by demonstrating that a substantial effect on interstate commerce was generated by the defendants' brokerage activities. Referring specifically to the requirement that plaintiff must allege a relationship between the activity involved and some aspect of interstate commerce, the Court observed:

To establish the jurisdictional element of a Sherman Act violation it would be sufficient for petitioners to demonstrate a **[*821]** substantial effect on interstate commerce generated by respondents' brokerage activity. Petitioners need not make the more particularized showing of an effect on interstate commerce caused by the alleged conspiracy to fix commission rates, or by those other aspects of respondents' activity that are alleged to be unlawful. The validity of this approach is confirmed by an examination of the case law. If establishing jurisdiction required a showing that the unlawful conduct itself had an effect on interstate commerce, jurisdiction would be defeated by a demonstration that the alleged restraint failed to have its intended anticompetitive effect. This is not the rule of our cases. See *American Tobacco Co. v. United States*, 328 U.S. 781, 811, 66 S. **[**15]** Ct. 1125, 1139, 90 L. Ed. 1575 (1946); *United States v. Socony Vacuum Oil Co.*, 310 U.S. 150, 225, n. 59, 60 S. Ct. 811, 846, 84 L. Ed. 1129 (1940)....

Id. 100 S. Ct. at 509.

Defendants have cited several cases in their memoranda which would appear to support dismissal of the Amended Complaint: *Wolf v. Jane Phillips Episcopal Memorial Medical Center*, 513 F.2d 684 (10th Cir. 1975); *Riggall v. Washington County Medical Society*, 249 F.2d 266 (8th Cir. 1957); *Spears Free Clinic and Hospital v. Cleere*, 197 F.2d 125 (10th Cir. 1952). These cases all involved dismissals of complaints for defective jurisdictional allegations under the Sherman Act in situations similar to that now before this Court. The dismissed antitrust complaints in the cases cited appear to involve only general jurisdictional allegations devoid of the specificity contained in plaintiff's Amended Complaint. Furthermore, these cases explicitly reject the analysis described above which links jurisdiction to the stream of interstate commerce by focusing upon the interstate

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509 F. Supp. 815, *, 1981 U.S. Dist. LEXIS 11119, **;
1981-2 Trade Cas. (CCH) P64,165

nature of the defendants' business of providing hospital care and services. E. g. Wolfe, supra at 687-688.

It is the Court's opinion that the **[**16]** proper standard to be used is that illustrated in the recent Supreme Court cases, McLain, supra; Rex Hospital, supra, that place the emphasis upon the interstate character of the defendants activities in general and not solely the alleged conspiratorial acts, thereby precluding dismissal of a complaint before the plaintiff has at least been accorded the opportunity of discovering facts in support of his claim. To the extent that the cases cited by the defendants apply a contrary standard, the Court declines to follow them.

The Court will determine the substance of plaintiff's antitrust allegations after he has had an opportunity to conduct limited discovery into the issues and can prepare an adequate response to the other objections raised by the defendants. Defendants will then be allowed to renew their remaining objections to the Sherman Act claim in an appropriate manner.

IV. CIVIL RIGHTS CLAIMS

(a) § 1983 allegations

Although 42 U.S.C. § 1983 is relatively simple and straightforward in its language, ⁶ [HN7] in order to sustain his claim plaintiff must allege: (1) that the defendants deprived him of some right secured by the Constitution or laws of the United States; and (2) **[**17]** that the defendants acted under color of state law. Adickes v. S. H. Kress & Co., 398 U.S. 144, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970); Fadjo v. Coon, 633 F.2d 1172 (5th Cir. 1981); Menchaca v. Chrysler Credit Corp., 613 F.2d 507 (5th Cir. 1980). [HN8] Both of these elements of a § 1983 action must be alleged and proven before relief can be forthcoming. An inspection of the Amended Complaint reveals that plaintiff can prove no set of facts that will permit the relief he seeks since he has been deprived of no federal or constitutional right. Nor have all of the defendants acted under color of state law.

6. "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

[18]** **[*822]** The defendants' alleged willful and malicious exclusion of the plaintiff from the medical staff simply does not constitute a violation of a federal right. Plaintiff has cited the Court to no authority supporting the proposition that a podiatrist has a federal right to membership on a hospital staff. Nor has the Court independently found any authority to support plaintiff's civil rights claims. To the contrary, the Fifth Circuit recently held that a podiatrist's constitutional rights went untrammled when he was denied staff membership at a public hospital. Shaw v. Hospital Authority of Cobb County, 614 F.2d 946 (5th Cir.), cert. denied, 449 U.S. 955, 101 S. Ct. 362, 66 L. Ed. 2d 220 (1980). ⁷

7. Although this case arose as an action to remedy alleged due process and equal protection violations and was not brought pursuant to the civil rights laws, the Shaw court nonetheless found that Dr. Shaw suffered no violation of a federal right on facts

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509 F. Supp. 815, *; 1981 U.S. Dist. LEXIS 11119, **;
1981-2 Trade Cas. (CCH) P64,165

nearly identical to those sub judice. The Court ruled that in the absence of a showing that the denial of staff privileges was not rationally based, or that it was precipitated by invidious racial discrimination, "it is not the province of this court to legislate the final resolution of a problem indigenous to the medical profession." *Id.* at 952.

There was also some indication given by plaintiff at his deposition that his cause of action really involved a due process and equal protection claim. See plaintiff's deposition at 52.

[19]** By adopting the memorandum decision of the district court, the Fifth Circuit found no constitutional defect in excluding Dr. Shaw from membership on a hospital medical staff by reason of his status as a podiatrist. The Court declined to interfere in an area that traditionally has been the province of the medical profession and not ordinarily subject to governmental regulation. In light of *Shaw*, the Court must reject plaintiff's invitation to find that he has been deprived of a federal right in this instance.

The Court agrees with the private hospital and physician defendants that they are not liable under § 1983 even if plaintiff had been deprived of some federal right. It is established that [HN9] private entities are subject to the Civil Rights laws only if their activities are significantly affected with state involvement:

The district court correctly held that [HN10] a private hospital is subject to the provisions of 42 U.S.C. § 1983 and the Fourteenth Amendment only if its activities are significantly affected with state involvement. [HN11] Section 1983 and the Fourteenth Amendment do not preclude invidious discrimination by private parties. *Civil Rights Cases*, 109 U.S. 3, 11, 3 **[**20]** S. Ct. 18, 21, 27 L. Ed. 835, 841 (1883).

Greco v. Orange Memorial Hospital Corporation, 513 F.2d 873, 877-878 (5th Cir.), cert. denied, 423 U.S. 1000, 96 S. Ct. 433, 46 L. Ed. 2d 376 (1975).

[HN12] The mere existence of some government tie to a private organization is not sufficient to support a finding of state action where the state has not sufficiently involved itself in the invidious discrimination. *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 92 S. Ct. 1965, 32 L. Ed. 2d 627 (1972). Moreover, the state must be involved in more than some activity of the offending institution itself, it must have been involved with the activity that caused the injury to plaintiff. *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 95 S. Ct. 449, 42 L. Ed. 2d 477 (1979) ("(T)he inquiry must be whether there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself." ⁸); *New York Jaycees v. United States Jaycees*, 512 F.2d 856 (2d Cir. 1975). Accord, *Sims v. Jefferson Downs*, 611 F.2d 609 (5th Cir. 1980).

8. *Id.* 419 U.S. at 351, 95 S. Ct. at 453; also quoted in *Sims v. Jefferson Down*, *infra* at 611.

[21]** Plaintiff's only reference to the state action nexus by the private hospital defendants is that these hospitals are licensed by state law. ⁹ [HN13] "The mere fact that a business is subject to state regulation does not by itself convert its action into that of the State for purposes of the Fourteenth **[*823]** Amendment." *Jackson v. Metropolitan Edison Co.*, *supra* at 350, 95 S. Ct. at 453.

9. Paragraph 49 C of the Amended Complaint refers to Fla.Stat. Chap. 395 concerning Hospital Licensing and Regulation procedures for hospitals situated in this state.

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509 F. Supp. 815, *, 1981 U.S. Dist. LEXIS 11119, **;
1981-2 Trade Cas. (CCH) P64,165

Plaintiff's claims do not involve any racially discriminatory practices that might justify a more expansive approach to the issue. Based upon the state action allegations contained in the Amended Complaint, the private hospital and physician defendants are not subject to suit under § 1983 for their actions against the plaintiff, actions involving the administrative affairs of the hospitals.

The policy of the Orange Memorial Hospital Corporation does **[**22]** not impinge upon the rights of a racial group seeking admittance and treatment, but rather affects primarily only the internal affairs of the facility. A secondary effect of the corporation's policy is admittedly to discriminate against persons seeking to obtain and physicians desiring to perform elective abortions. We feel, however, that the interest of the hospital in ordering its internal administrative affairs outweighs the interest of the people disadvantaged in this case.

Greco, supra at 880.

What involvement the state may have through its licensing procedures is not actionable unless these regulations somehow compelled the hospitals or physicians to act against plaintiff in an unlawful manner. *Waters v. St. Francis Hospital*, 618 F.2d 1105 (5th Cir. 1980). There is no allegation to this effect in the Amended Complaint.

(b) § 1985 allegations

Plaintiff has no claim under 42 U.S.C. § 1985(3) ¹⁰ since the Amended Complaint fails to contain any allegations that would show both the private deprivation of the enjoyment of the laws and an invidious class-based discriminatory motivation (usually, but not always, involving racial bias). *McLellan v. Mississippi Power **[**23]** & Light Co.*, 545 F.2d 919 (5th Cir. 1977). ¹¹

10. "If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws...." § 1985(1) and (2) are inapplicable.

11. This was an en banc decision in which the majority held that an employee discharged from private employment solely because he filed a petition in voluntary bankruptcy has no cause of action under 42 U.S.C. § 1985(3). The majority exhaustively analyzed the application of the statute by following the guidelines prescribed by the Supreme Court in *Griffin v. Breckenridge*, 403 U.S. 88, 91 S. Ct. 1790, 29 L. Ed. 2d 338 (1971). The Supreme Court in *Griffin* held that § 1985(3) reaches private conspiracies as well as those performed under color of state law and elucidated the necessary elements to successfully maintain a cause of action under this section. In its opinion, the Fifth Circuit expressly reserved decision on whether Congress intended only racial bias to activate the provisions of the statute but advised restraint when a court is confronted with class-based discrimination grounded in a non-racial animus. *McLellan*, supra at 929.

[24]** Plaintiff has not alleged and the Court fails to discern any illegal conduct committed by the defendants in acting to deprive plaintiff of a position on the hospital medical staff. ¹² Moreover, there has been no allegation of any racially motivated discrimination against plaintiff by the defendants. He alleges a class-based animus against him as a podiatrist. This discrimination is not actionable under the cases heretofore construing the reach of § 1985(3):

Federal Courts have recognized that those who are discriminated against because of political views or associations fall with (sic) the protective scope of Section 1985(2) and (3). Courts have found a class-based animus sufficient to support causes of action where the conspiracy is directed toward supporters of a particular political candidate,

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509 F. Supp. 815, *, 1981 U.S. Dist. LEXIS 11119, **;
1981-2 Trade Cas. (CCH) P64,165

Cameron v. Brock, [**824**] 473 F.2d 608 (6th Cir. 1973) and Means v. Wilson, 522 F.2d 833 (8th Cir. 1975), cert. denied, 424 U.S. 958, 96 S. Ct. 1436, 47 L. Ed. 2d 364 (1976); voters who were deceived about the actual effect of their vote, Smith v. Cherry, 489 F.2d 1098 (7th Cir. 1973), cert. denied, 417 U.S. 910, 94 S. Ct. 2607, 41 L. Ed. 2d 214 (1974); individuals critical [**25**] of the President and his policies, Glasson v. City of Louisville, 518 F.2d 899 (6th Cir.), cert. denied, 423 U.S. 930, 96 S. Ct. 280, 46 L. Ed. 2d 258 (1975); members of a group advocating an unpopular position, Puentes v. Sullivan, 425 F. Supp. 249 (W.D.Tex.1977); laborers who are not members of a union, Scott v. Moore, 461 F. Supp. 224 (E.D.Tex.1978); members of the teaching profession who talk or associate with the CIA, Selzer v. Berkowitz, 459 F. Supp. 347 (E.D.N.Y.1978); and students who exercise their first amendment rights by joining certain organizations. Brown v. Villanova University, 378 F. Supp. 342 (E.D.Pa.1974).

Kimble v. D. J. McDuffy, Inc., 623 F.2d 1060, 1067 (5th Cir. 1980) (rehearing en banc pending).

12. The Court excludes the Sherman Act count contained in the Amended Complaint which alleges an anti-competitive conspiracy on the part of the defendants. If plaintiff sustains these allegations with proof, a remedy is already provided for by that law. See 15 U.S.C. §§ 15 & 26.

[**26**] For these reasons, plaintiff's § 1985 claim cannot be sustained.

(c) § 1986 allegations

[HN14] No claim for relief will lie under 42 U.S.C. § 1986¹³ until a valid claim has been established under § 1985. Hamilton v. Chaffin, 506 F.2d 904 (5th Cir. 1975); Zentgraf v. Texas A & M University, 492 F. Supp. 265 (S.D.Tex.1980); Shore v. Howard, 414 F. Supp. 379 (N.D.Tex.1976). Plaintiff having established no § 1985 claim, the § 1986 claim must also be dismissed.

13. This section extends liability in damages to those persons "who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 ... are about to be committed, and having power to prevent or aid in preventing the commission of the same, (neglect or refuse) so to do...."

(d) Summary

Whether plaintiff couches his claims for relief under the rubric of due process, equal protection or the civil rights laws, the Amended Complaint alleging violations of plaintiff's civil rights must be dismissed for failure to state a claim [**27**] upon which relief can be granted.

V. CONCLUSION

After a thorough review of the applicable law, the Court concludes that plaintiff has no cognizable claim under either 42 U.S.C. §§ 1983, 1985 or 1986. The Court further concludes that it would be premature to dismiss the Amended Complaint as to the Sherman Act claim without permitting plaintiff an opportunity to conduct limited discovery and respond to the objections raised by the defendants, should they elect to renew them. Accordingly, it is

ORDERED AND ADJUDGED that the defendants' joint motion to dismiss is GRANTED in part and DENIED in part as follows:

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509 F. Supp. 815, *; 1981 U.S. Dist. LEXIS 11119, **;
1981-2 Trade Cas. (CCH) P64,165

(a) that portion of the Amended Complaint alleging violations of 42 U.S.C. §§ 1983, 1985 and 1986 are hereby DISMISSED with prejudice;

(b) that portion of the Amended Complaint alleging violations of 15 U.S.C. §§ 1 and 2 presently meet the minimum jurisdictional requirements of the Sherman Act; and

(c) the remaining objections raised by the defendants to the Amended Complaint are hereby DENIED without prejudice to renew at a later date upon proper motion.

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314 F. Supp. 442, *; 1970 U.S. Dist. LEXIS 11296, **

**Steven L. WALKER, a minor, by and through his next friend,
natural guardian and legal guardian, his mother, Ann Walker
Reisman, and Ann Walker Reisman, individually, Plaintiffs, v.
Ralph J. GRANT and American Mutual Insurance Company of
Boston, Defendants**

No. 68-1280-Civ-CA

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF FLORIDA, MIAMI DIVISION**

314 F. Supp. 442; 1970 U.S. Dist. LEXIS 11296

June 17, 1970

CORE TERMS: leg, backing, circle, driver, traffic, parked, lane, hazard, circumference, motorcycle, prosthesis, inner, approaching, traveled, issue of liability, parking spaces, loss of earnings, adjacent, angular, parking, artery, tibia

JUDGES: **[**1]** Atkins, District Judge.

OPINION BY: ATKINS

OPINION

[*442] MEMORANDUM OPINION

ATKINS, District Judge.

What are the responsibilities of a driver backing his automobile, which had been parked at a 39 degree angle around the inner circumference of a circle, into a lane of traffic at night where the area is well lighted? The answer to this question resolves the issue of liability as between the defendant Ralph J. Grant, the owner and operator of an Oldsmobile sedan, and the plaintiff Steven **[*443]** L. Walker, the owner and operator of a Honda motorcycle, involved in an accident which occurred on December 11, 1966 about 7:50 p.m. in Young's Circle at Hollywood, Florida. On the Circle in question the angular parking spaces were surrounded by three traffic lanes. The Honda was proceeding counterclockwise in the center of the lane nearest the parking area. Its speed was well within the maximum of the 25 mph. The lights on the motorcycle were burning.

Defendant Grant testified that he turned his lights on and started his motor. He then looked back and to his left. There was a car parked, according to him, in the parking space immediately adjacent on the left. Directing his vision **[**2]** thru the rear window, as well as to the left and over his right shoulder, Grant slowly backed into the lane which

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embraced the circle. His backing was cautious, he said. He had traveled the circle and parked on the inner circumference a number of times previously.

Admittedly, Grant never saw or heard the approach of the Honda. There was credible evidence that the angular parking on the inner circumference of the circle created a special hazard. Particularly when a car was parked in an adjacent space, the vision of the "backing" driver was impaired. This was compounded by the circular direction of the roadway on which approaching traffic would operate. There was testimony proffered that the driver of the Honda should be able to see the backing vehicle before the latter could see the motorcycle.

The duty of a backing driver on a State Road (as this was) is delineated by Florida Statutes, 1967, § 317.731, F.S.A. It required that such operation must not be done unless it can be made "with safety and without interfering with other traffic." In amplification, this driver must exercise every "means at his hand to protect life and property of others that may be in his path." Green **[**3]** v. Atlantic Co., (Fla. 1952), 61 So. 2d 185, 186. In fine, it is that operator's duty to apprise the approaching vehicle of the contemplated entry and to see, and to yield to, any vehicle so near as to constitute a hazard as the backing automobile moves into the traveled way. Special hazards to vision only enhance that duty.

At the close of this non jury trial, I resolved the issue of liability against the defendant Grant. Thus, there remains only the issue of damages sought by the injured plaintiff, who is now 21, and his mother, who was awarded his custody in earlier divorce proceedings. During a substantial part of the time since the injury, Steven has been confined in a state institution for convictions of possession of marihuana.

Steven Walker sustained a compound commuted fracture of the left tibia and fibula. One of the two (there are normally three) arteries in the leg was severed. Repair procedures, complicated by the absence of the perineal artery, were abortive. Several separate hospital confinements totalling 129 days were required. Psychiatric treatment was necessary. Osteomalitis developed at the injury site. The leg is now one and one-half inches shorter than **[**4]** the right. Steven limps and complains that the leg hurts continuously. His treating physician and surgeon, Dr. Harry B. Orringer, found on April 17, 1970 a nonunion at the junction of the middle and lower thirds of the left tibia. The Court-appointed physician, Dr. Harry Beller, found that this leg is useless and must be amputated below the knee and a prosthesis supplied. This will result in a functional extremity for practical purposes. He assigned a 35% permanent partial disability of the body as a whole and 90% loss of the left leg. The total medical and related expenses to date are \$18,128.40. The amputation and prosthesis will cost between \$2500 and \$3000.

The injured plaintiff was not living with his mother at the time of the injury. He had moved out following an altercation with his step-father. From **[*444]** the time he was 14 there had been bitter disputes with his real father (from whom his mother was subsequently divorced) resulting in his exhibiting hostility toward that parent. He manifested personality problems and anti-social behavior before the subject accident.

The plaintiff Steven Walker's greatest need, aside from the leg operation, is motivation. **[**5]** He has the mental capacity to develop skills in an occupation which would not require full physical capabilities in the left leg. He cannot perform heavy manual labor.

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The Court has assumed that the plaintiff mother, Ann Walker Reisman, has paid or incurred obligation to pay the medical and related expense involved. Accordingly, she is awarded Twenty Thousand Dollars (\$20,000.00) to effect that reimbursement and payment of damages for any nursing care, loss of companionship, and loss of earnings during Steven's minority. The plaintiff Steven L. Walker is awarded Eighty Thousand Dollars (\$80,000.00) for all recoverable losses of any kind, including but not limited to (a) past and future loss of earnings, (b) mental anguish and pain and suffering, and (c) future medical, hospital and prosthesis expenses.

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