

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

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 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

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