UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

EILEEN MALDONADO, DARRYL SOIGNET, SR., AND CAROL VERLANDER EISWIRTH ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED — CIVIL ACTION

VERSUS — NO. 04-2635

OCHSNER CLINIC FOUNDATION, AMERICAN HOSPITAL ASSOCIATION, AND JOHN DOES 1 THROUGH 10 — SECTION "F"

ORDER AND REASONS

Before the Court is American Hospital Association's Motion to Dismiss. For the reasons that follow, American Hospital Association's motion is DENIED.

The facts have been summarized elsewhere. The plaintiffs argue that AHA conspired with and aided and abetted Ochsner in the questioned practices by (1) publishing memos that advised Ochsner that it could not provide discounts to uninsured patients and had to engage in the abusive collection practices; (2) by falsely representing to government entities that Medicare regulations prohibited Ochsner from providing discounts to uninsured patients and required it to engage in the abusive collection practices; and

(3) by falsely representing and concealing the true cost of the charity care provided by Ochsner.

AHA now moves to dismiss these counts, Counts Six and Seven, of the complaint.

I.

In considering a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim upon which relief may be granted, the court must take the factual allegations contained in the complaint as true and resolve any ambiguities or doubts regarding the sufficiency of the claim in favor of the plaintiff. Fernandez-Montes v. Allied Pilots Assoc., 987 F.2d 278, 284 (5th Cir. 1993). The complaint should be dismissed if it appears beyond a doubt that the plaintiff can prove no set of facts supporting his claim which would entitle him to relief. Id. at 285; Leffall v. Dallas Independent School District, 28 F.3d 521, 524 (5th Cir. 1994).

II.

AHA contends that it cannot be held liable for conspiracy or aiding and abetting because the communications that form the basis of the cause of action are protected by the First Amendment. The plaintiffs contend that the communications are not protected by the First Amendment because the communications were the vehicle through which the wrong was perpetrated.

There is precedent for communications that explain how to

commit a wrong being used to establish liability for aiding and abetting that wrong. See, e.g., Rice v. Paladin Enters., Inc., 128 F.3d 233, 245 (4th Cir. 1997). The complaint claims that AHA has provided substantial assistance to Ochsner on its billing and collection practices, which the plaintiffs assert have wrongfully harmed them. Should plaintiffs prove that Ochsner is liable for its actions, AHA's "substantial assistance and guidance" could give rise to a remedy at law, given a certain set of facts. Thus, the plaintiff's complaint is sufficient to survive a Motion to Dismiss under Rule 12(b)(6). The nature of AHA's communications and the extent of its assistance and guidance cannot properly be handled in a Motion to Dismiss because the Court, to resolve the issue, must look into the facts of the communications beyond what is stated in the complaint.

AHA also contends that there is no underlying wrong upon which to base the conspiracy and aiding and abetting claims. Declaring all of the plaintiffs' claims meritless, as AHA requests, would, again, require the Court to look into facts beyond those stated in the complaint. It is sufficient to say that a certain set of facts could give rise to a remedy at law. Like AHA's role, the merits of the plaintiffs' claims cannot be addressed by Rule 12(b)(6).

AHA also contends that the plaintiffs are attempting to impermissibly base the conspiracy and aiding and abetting claims on a breach of contract. The plaintiffs accuse AHA of conspiring and

aiding and abetting in violations of Louisiana's consumer protection laws, which do not involve a breach of contract.

Accordingly, American Hospital Association's motion to dismiss is DENIED.

New Orleans, Louisiana, December 6, 2004.

MARTIN L. C. FELDMAN
UNITED STATES DISTRICT JUDGE