

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SENIOR HEALTH INSURANCE COMPANY OF
PENNSYLVANIA,

Plaintiff,

-v-

BEECHWOOD RE LTD., et al.,

Defendants.

18-cv-6658 (JSR)

MARTIN TROTT and CHRISTOPER SMITH,
as Joint Official Liquidators and
Foreign Representatives of
PLATINUM PARTNERS VALUE ARBITRAGE
FUND L.P. (in Official Liquidation) and
PLATINUM PARTNERS VALUE ARBITRAGE
FUND L.P. (in Official Liquidation),

Plaintiffs,

-v-

PLATINUM MANAGEMENT (NY) LLC,
et al.,

Defendants.

18-cv-10936 (JSR)

**DEFENDANT MURRAY HUBERFELD'S REPLY MEMORANDUM OF LAW IN
FURTHER SUPPORT OF HIS MOTION TO DISMISS THE AMENDED COMPLAINT**

In his opening brief, Defendant Murray Huberfeld ("Huberfeld"), both individually and by joinder with the motions to dismiss brought by Defendant David Bodner and the other Moving Defendants, showed that Plaintiffs' strategy to plead their claims collectively against the so-called Platinum Defendants and Beechwood Defendants resulted in an Amended Complaint that does not satisfy the pleading requirements of Fed. R. Civ. P. 8 and 9(b).

In Opposition,¹ Plaintiffs now understate the extent to which they improperly rely on group pleading, asserting that “the Amended Complaint provides ample detail as to the actions of each individual Movant.” (Opp. at 29.) Far from “ample detail,” however, the Amended Complaint does not contain a single factual allegation that Huberfeld *himself* engaged in any actionable behavior. This is understandable, of course, because there are no such facts – the Amended Complaint contains no allegations that Huberfeld was a fund manager; an officer, director, or employee of Platinum; or an officer, director, or employee of Beechwood. Instead, Plaintiffs only allege, in relevant part, that Huberfeld was a co-founding co-owner of certain Platinum and Beechwood entities (AC ¶¶ 12(iii), 67), involved to some extent in those entities’ business (AC ¶ 82), and that he had certain innocuous personal and professional relationships with other individuals and entities also named as defendants (*see, e.g.*, AC ¶ 382). The conduct alleged against Huberfeld is not actionable.

The Opposition itself is a testament to how deficient the Amended Complaint’s allegations against Huberfeld really are. Tellingly, the only portion of the Opposition directed toward Huberfeld lumps him in with Bodner, referring to Huberfeld and Bodner collectively (as “they”), and not individually. (Opp. at 9-10.) Besides alleging that Huberfeld is a member of two defendant-groups – the “Platinum Defendants” and the “Beechwood Defendants” (AC ¶ 67) – the Amended Complaint lacks any allegations of specific conduct by Huberfeld to warrant his inclusion in those groups. Plaintiffs cannot escape myriad decisions in this Circuit dismissing complaints premised on analogously deficient group pleadings. *See, e.g., Atuahene v. City of Hartford*, 10 F. App’x 33, 34 (dismissing complaint under Rule 8 because plaintiff “lump[ed] all the defendants together in each claim and provid[ed] no factual basis to distinguish their conduct”);

¹ Plaintiffs’ Opposition to Moving Defendants’ Motions to Dismiss, dated February 11, 2019 (18-cv-10936-JSR ECF Doc. No. 222) (the “Opposition” or “Opp.”).

Ochre LLC v. Rockwell Architecture Planning & Design, P.C., No. 12 Civ. 2837 (KBF), 2012 U.S. Dist. LEXIS 172208, at *16 (S.D.N.Y. Dec. 3, 2012) (dismissing causes of action where the “key facts pled in the SAC are ‘lumped’ together and thus do not afford each defendant adequate notice of the factual allegations it faces.).

For this reason, and for all of the reasons set forth in the reply memoranda of law filed by Bodner and other similarly situated Moving Defendants, the Amended Complaint should be dismissed with prejudice.

Date: February 15, 2019

Respectfully submitted,

/s/ Jeffrey C. Daniels
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