IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ACE AMERICAN INSURANCE COMPANY,	:	
Plaintiff,	:	
v.	:	**Civ. No. 12-4724**
ONEBEACON U.S. HOLDINGS, INC.	:	
Defendant.	:	

ORDER

AND NOW, this _____ day of _____, 2012, upon consideration of Defendant OneBeacon U.S. Holdings, Inc.'s Motion to Dismiss the Complaint and any response thereto, it is hereby **ORDERED** that the Motion is **GRANTED**.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond
Paul S. Diamond, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ACE AMERICAN INSURANCE COMPANY,	:	
Plaintiff,	:	
v.	:	**Civ. No. 12-4724**
ONEBEACON U.S. HOLDINGS, INC.	:	
Defendant.	:	

DEFENDANT ONEBEACON U.S. HOLDINGS, INC.'S
MOTION TO DISMISS THE COMPLAINT

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Local Rule 7.1, this Court's Order of August 28, 2012 (Doc. No. 13), and for the reasons set forth more fully in the attached Memorandum of Law, Defendant OneBeacon U.S. Holdings, Inc. ("OneBeacon Holdings") moves this Court for an Order in the form attached hereto dismissing plaintiff's Complaint in its entirety.

Dated: August 31, 2012

Respectfully submitted,

/s/ Michael Lieberman

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v.	:	**Civ. No. 12-4724**
ONEBEACON U.S. HOLDINGS, INC.	:	
Defendant.	:	

DEFENDANT ONEBEACON U.S. HOLDINGS, INC.'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF'S COMPLAINT

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Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Local Rule 7.1, and this Court's Order of August 28, 2012 (Doc. No. 13), Defendant OneBeacon U.S. Holdings, Inc. ("OneBeacon Holdings") respectfully submits this Memorandum of Law in Support of its Motion to Dismiss Plaintiff's Complaint.

INTRODUCTION AND RELEVANT BACKGROUND

This lawsuit alleges a dispute over the decision by eight former employees of plaintiff ACE American Insurance Company ("plaintiff" or "ACE") to resign from their employment with ACE and to accept positions with a competitor, which the Complaint incorrectly identifies as OneBeacon Holdings.[1] Complaint ¶¶ 6-10. Unhappy about the departure of several of its employees, ACE filed this action, alleging interference with unspecified contractual relations, a misappropriation of unidentified trade secrets, tortious interference with ACE's at-will employment relationships, and aiding and abetting a duty of loyalty breach. The Complaint should be dismissed because it does not satisfy minimal pleading standards with respect to any claim. ACE's claims of misappropriation, tortious interference, and similar misconduct are based on conjecture, innuendo, and legal conclusion, and the Complaint fails to allege facts sufficient to state a claim for relief "that is plausible on its face" or which "raise a right to relief above the speculative level." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

[1] OneBeacon Holdings did not hire and is not the current employer of ACE's former employees. OneBeacon Holdings is a holding company which does not underwrite Surety bonds. It is the grandparent of OneBeacon Services, LLC, the company that employs ACE's eight former employees. All arguments advanced in this Motion to Dismiss are based on an application of the law to plaintiff's allegations, and would apply equally to OneBeacon Services, LLC.

LEGAL STANDARD

A Rule 12(b)(6) motion tests the legal sufficiency of a claim, and plaintiff's allegations in this case do not meet the applicable standard. Fed. R. Civ. P. 12(b)(6). "[A] plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Eagle v. Morgan*, 2011 WL 6739448, at *4 (E.D. Pa. Dec. 22, 2011) (quoting *Twombly*, 550 U.S. at 555) (quotations omitted). A complaint must allege sufficient facts to state a claim for relief "that is plausible on its face." *Iqbal*, 556 U.S. at 678 (citation omitted). A claim is "plausible" when the "plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. To survive a motion to dismiss, the factual allegations in a complaint must "raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. The well-pleaded facts must "permit the court to infer more than the mere possibility of misconduct." *Sensus USA, Inc. v. Elliott Bay Eng'g, Inc.*, 2011 WL 2650028, at *4 (W.D. Pa. July 6, 2011).

A complaint is insufficient where, as here, "it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557). In deciding this Motion to Dismiss, the court should identify those allegations that, "'because they are no more than conclusions, are not entitled to the assumption of truth.'" *Chechele v. Hayne*, 2011 WL 2519522, at *4 (E.D. Pa. June 20, 2011) (quoting *Iqbal*, 129 S. Ct. at 1950). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice," and the notice pleading standards of Rule 8 do not "unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Eagle*, 2011 WL 6739448, at *4 (internal citations and quotations omitted).

ARGUMENT

I. THE COMPLAINT FAILS TO ADEQUATELY ALLEGE FACTS THAT WOULD SUPPORT ACE'S CLAIM FOR MISAPPROPRIATION OF TRADE SECRETS

Count II of ACE's Complaint for misappropriation of trade secrets should be dismissed because it fails to sufficiently plead the claim with the requisite "facial plausibility," *i.e.*, the "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *See Sensus USA*, 2011 WL 2650028, at *4 (citing *Iqbal*, 129 S. Ct. at 1249).[2] Specifically, plaintiff fails to allege facts that would support an inference that any of ACE's trade secrets were "misappropriated" by anyone.

In order to state a claim for "misappropriation" under the Pennsylvania Uniform Trade Secrets Act ("PUTSA"), ACE must sufficiently allege either the "acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means" or the "disclosure or use of a trade secret of another without express or implied consent" under certain defined conditions. *See* 12 Pa. Cons. Stat. § 5302. Under Pennsylvania law, courts consider the following factors to determine whether information constitutes a trade secret:

> (1) the extent to which the information is known outside of the owner's business; (2) the extent to which it is known by employees and others involved in the owner's business; (3) the extent of measures taken by the owner to guard the secrecy of the information; (4) the value of the information to the owner and to his competitors; (5) the amount of effort or money expended by the owner in developing the information; and

[2] Count I of the Complaint seeks an injunction and is actually a prayer for relief, not a stand-alone claim. It, too, should be dismissed. The "relief a plaintiff seeks, and the claims he asserts are conceptually distinct components of a complaint, and there is no need for a plaintiff to devote a separate count of a complaint to a request for a certain type of relief." *See Central Transport, LLC v. Atlas Towing, Inc.*, 2012 WL 3135511, at *7 n.5 (E.D. Pa. Aug. 1, 2012) (citation omitted).

> (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Conference Archives, Inc. v. Sound Images, Inc., 2010 WL 1626072, at *8 (W.D. Pa. March 31, 2010). Plaintiff fails to allege any non-conclusory factual information relevant to these factors, such that the Court could determine whether it is "plausible" that any trade secret was misappropriated from ACE. Moreover, rather than alleging an unlawful "acquisition" or "disclosure," ACE has failed to plead any facts that would "permit the court to infer more than the mere possibility of misconduct." *See Sensus USA*, 2011 WL 2650028, at *4 (citing *Iqbal*, 129 S. Ct. at 1950).

Stripped of its labels, conclusions, and the formulaic recitation of legal elements, ACE's misappropriation claim is based on an allegation that "the Surety Employees deleted a substantial amount of e-mail that would have showed their activities [in planning to resign] and that **may have** contained proprietary information relating to ACE." Complaint ¶ 12 (emphasis added). The Complaint, however, makes no connection between the deletion of e-mails by ACE employees, and the "acquisition" or "disclosure" of those e-mails by OneBeacon Holdings. ACE's suspicion that deleted e-mails "may have contained proprietary information" reflects pure conjecture, particularly given ACE's allegation that it has already forensically analyzed the electronic devices of its former employees. Without more, ACE's allegations are insufficient "to raise a right to relief *above* the speculative level to meet federal notice pleading standards." *Sensus USA*, 2011 WL 2650028, at *7 (citing *Twombly*, 550 U.S. at 555) (emphasis in original); *see also Chechele,* 2011 WL 2519522, at *4 (dismissing as speculative plaintiff's claim seeking to recover based on what she "**might** discover 'during the course of th[e] action'") (emphasis added). The additional allegations that comprise Count II likewise provide no factual support for the misappropriation element of ACE's claim, and consist solely of labels and legal conclusions.

See Complaint ¶ 28 ("During their employment and upon their departure from ACE, the Surety Employees misappropriated trade secrets."); *id.* ¶ 29 ("The Surety Employees misappropriated these trade secrets at the direction of and for the benefit of OneBeacon.").[3] Accordingly, because the Complaint fails to allege a sufficient factual basis to support misappropriation under PUTSA, Count II should be dismissed.

II. THE COMPLAINT FAILS TO STATE A CLAIM FOR TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONSHIPS

Plaintiff's Count III claim for tortious interference with contractual relationships must be dismissed because plaintiff fails to allege with specificity the identity of any client or third-party contractual relationship that has been the subject of actionable interference. To state a claim for tortious interference with contractual relationships under Pennsylvania law,[4] plaintiff was required to plead facts sufficient to establish the following elements: (1) an "existing or prospective contractual relationship" between plaintiff and a third party; (2) an intent on the part of OneBeacon Holdings to harm the plaintiff "by interfering with this relationship"; (3) an

[3] ACE's allegations are also far too generalized in that they fail to plead facts regarding the conduct of any particular individual who allegedly misappropriated ACE's trade secrets. *See Meknowitz v. Pottstown Mem'l Med. Ctr.*, 1999 WL 410362, at *3 (E.D. Pa. June 21, 1999) (granting dismissal where allegations did not "set forth facts" sufficient to provide "notice as to the misconduct" or to provide the court "with a basis upon which to determine the viability of the claims" against any particular defendant); *see also Best Med. Int'l, Inc. v. Accuray, Inc.*, 2011 WL 860423, at *6 (W.D. Pa. Mar. 9, 2011) (granting dismissal to the extent the complaint contained "only generic, conclusory references to" the individuals alleged to have acted unlawfully).

[4] Six of ACE's eight former employees live and work in states other than Pennsylvania, and upon information and belief, several states have contacts with this litigation. While a comprehensive choice of law analysis is beyond the scope of this Motion, OneBeacon Holdings reserves its right to argue, upon further development of the record, that the law of another state applies to plaintiff's claims if there is a conflict between Pennsylvania law and the law of a state with more significant contacts to the claim. *See Taylor v. Mooney Aircraft Corp.*, 265 F. App'x 87, 91 (3d Cir. 2008) (Pennsylvania choice of law analysis involves identification of conflicts and the policies underlying a state's conflicting laws that are relevant to its contacts with the litigation) (internal citation omitted).

"absence of privilege or justification for such interference"; and (4) "actual harm or damage" to plaintiff as a result of the alleged interference. *Bioquell, Inc. v. Feinstein*, 2010 WL 4751709, at *7 (E.D. Pa. Nov. 23, 2010) (citing *United States Healthcare v. Blue Cross of Greater Phila.*, 898 F.2d 914, 925 (3d Cir. 1990)).

Where a claim does not specify the contracting party and the contractual relation that is the subject of the alleged interference, it is subject to dismissal. *See Meissner Chevrolet Geo-Oldsmobile v. Rothrock Chevrolet*, 2007 WL 3103114, at *3 (E.D. Pa. Oct. 23, 2007) ("Because plaintiff has not alleged the existence of a contractual or prospective contractual relationship between the complainant and a third party, plaintiff fails to state a claim for tortious interference with existing and prospective relations."); *see also Eagle*, 2011 WL 6739448, at *16 (dismissing tortious interference with prospective relations counterclaim where counterclaim plaintiff failed to identify "any individual or corporation with whom [it] had a reasonable likelihood of a contract, and which was disrupted by the actions of the [counterclaim defendant]"). Plaintiff's Complaint does not identify any specific clients or contracts and Count III should, accordingly, be dismissed. *See* Complaint ¶ 35 (alleging only that "ACE had ongoing and valuable business contracts and relationships with" unidentified clients).

Count III is independently subject to dismissal for failure to establish the second and third elements of a claim for tortious interference. *See Bioquell*, 2010 WL 4751709, at *7 (dismissing tortious interference claim where, as here, plaintiff failed to "advance any facts which support the inference that Defendants targeted Plaintiff's customers with the intent to harm Plaintiff"); *Simon Prop. Group, Inc. v. Palombaro*, 682 F. Supp. 2d 508, 512 (2010) (granting motion to dismiss because a mere "blanket, conclusory statement" regarding the lack of privilege element was insufficient to state a claim). Plaintiff alleges that OneBeacon Holdings is a "competitor of ACE" that is "engaged in a substantially similar business." Complaint ¶ 8. Rather than

supporting a tortious interference claim, this allegation actually establishes that OneBeacon Holdings had a privilege to compete with ACE for business as well as for qualified employees. *Geib v. Alan Wood Steel Co.*, 419 F. Supp. 1205, 1209 (E.D. Pa. 1976) (recognizing financial interest privilege and holding that malicious interference claim regarding at-will employment contract fails as a matter of law where alleged misconduct was subject to the privilege).[5]

III. THE COMPLAINT FAILS TO STATE A CLAIM FOR AIDING AND ABETTING A BREACH OF THE DUTY OF LOYALTY

A. The Pennsylvania Supreme Court Does Not Recognize A Common Law Claim For Aiding And Abetting The Breach Of A Duty Of Loyalty

Count IV of plaintiff's Complaint is entitled "Aiding and Abetting Duty of Loyalty Violation." Multiple courts in this district have observed that the Pennsylvania Supreme Court has never recognized a common law claim for aiding and abetting tortious conduct such as the breach of a fiduciary duty of loyalty. *See, e.g., Pierce v. Rossetta Corp.*, 1992 WL 165817, at *7 (E.D. Pa. June 12, 1992) ("The Pennsylvania Supreme Court has not spoken" about whether Pennsylvania recognizes a claim for aiding and abetting the breach of a duty of loyalty); *cf. S. Kane & Son Profit Sharing Trust v. Marine Midland Bank*, 1996 WL 325894, at *9 (E.D. Pa. June 13, 1996) (finding Pennsylvania Supreme Court has never adopted a cause of action for "aiding and abetting" tortious conduct and granting summary judgment in favor of defendant on claim for aiding and abetting fraud).

[5] To the extent this and plaintiff's other tort-based claims in the Complaint relate to an alleged misappropriation of trade secrets, all such claims will be preempted by the Pennsylvania Uniform Trade Secrets Act, 12 Pa. Cons. Stat. § 5308 ("PUTSA"), which "displaces conflicting tort, restitutionary and other law . . . providing civil remedies for misappropriation of a trade secret." *See, e.g., Hill v. Best Med. Int'l, Inc.*, 2011 WL 5082208, at *15 (W.D. Pa. Oct. 25, 2011) ("to the extent the allegations pertain to the Alleged Trade Secrets, the tort claims are pre-empted"). If the Court does not dismiss plaintiff's claims, OneBeacon Holdings reserves its right to raise and establish its preemption defense upon further development of the record.

The *Pierce* court predicted that Pennsylvania would recognize a claim for aiding and abetting a breach of fiduciary duty in certain circumstances, but only where the alleged abettor was shown to have offered "substantial assistance" in the breach. 1992 WL 165817, at *7-8 (surveying law and concluding the Pennsylvania Supreme Court might recognize such a claim, but "would require a showing of substantial assistance in order to establish liability for aiding and abetting the breach of a fiduciary duty"). Twenty years have passed, however, since the *Pierce* court first predicted that the Pennsylvania Supreme Court was likely to recognize a common law claim for aiding and abetting the breach of a fiduciary duty. The Pennsylvania Supreme Court has still not recognized such a claim under Pennsylvania law, and other federal courts have subsequently opined that the aiding and abetting tort does not exist. *See Flood v. Makowski*, 2004 WL 1908221, at *36 (M.D. Pa. Aug. 24, 2001) (noting Pennsylvania Supreme Court "has not recognized aiding and abetting a breach of fiduciary duty," and dismissing such claims); *Daniel Boone Area Sch. Dist. v. Lehman Bros., Inc.*, 187 F. Supp. 2d 400, 413 (W.D. Pa. 2002) ("As a federal court sitting in diversity, it is not for me to say whether the common law of Pennsylvania should include an action" for aiding and abetting a breach of fiduciary duty.).

OneBeacon Holdings respectfully submits that the claim alleged in Count IV does not exist under Pennsylvania law and should be dismissed.

B. Plaintiff's Claim For Aiding And Abetting The Violation Of A Breach Of The Duty Of Loyalty Does Not Allege Facts Which Raise A Right To Relief Beyond The Speculative Level

Even if Pennsylvania's high court were to recognize a claim for aiding and abetting the breach of a duty of loyalty, which it has not, plaintiff's Complaint does not support such a claim. The court in *Pierce* predicted that the elements of a claim for aiding and abetting the breach of a fiduciary duty of loyalty would be: "(1) a breach of a fiduciary duty owed to another, (2) knowledge of the breach by the aider or abettor, and (3) substantial assistance or

encouragement by the aider or abettor in effecting that breach." 1999 WL 165817, at *8. Count IV of the plaintiff's Complaint includes a single paragraph of "bare bones" allegations related to this claim which do not sufficiently allege facts to support any of the three elements. *See* Complaint ¶ 40.

The allegation within Count IV against OneBeacon Holdings is a mere recitation of legal conclusions. *Id*. ("OneBeacon induced the Surety Employees to violate their duty of loyalty . . . thereby aiding and abetting the Surety Employees' violation of the duty of loyalty."). It does not include a single allegation that would establish OneBeacon Holdings' knowledge of any tortious conduct by the "Surety Employees'" amounting to a breach of the duty or loyalty, or any substantial assistance provided by OneBeacon Holdings to the former employees in effecting such a breach. *See Howard Hess Dental Labs., Inc. v. Dentsply Int'l, Inc.*, 602 F.3d 237, 255 (3d Cir. 2010) (affirming dismissal of conspiracy claim where plaintiffs repeated their conclusory allegations of the "knowledge" element throughout their complaint, because "it does not suffice to simply say that the defendants had knowledge; there must be factual allegations to plausibly suggest as much").

With respect to ACE's former employees, Count IV makes no individualized allegations that could establish their liability for the breach of a fiduciary duty, the first element necessary to an aiding and abetting claim. *Best Medical Int'l, Inc. v. Accuray, Inc.*, 2011 WL 860423, at *6 (W.D. Pa. March 9, 2011) (patent infringement claims against plaintiff's former employees failed to meet federal pleading standards and would be dismissed where Complaint contained "only generic, conclusory references to all of the Individual Defendants as a group" and did not identify any individualized conduct).

Even if the Court looks outside of Count IV to other allegations in the Complaint, plaintiff's allegations are insufficient to establish any of the three elements of this claim. For

example, although plaintiff alleges in Paragraph 17 of the Complaint that former employee Chad Anderson should have reported the "possible resignations" of his subordinates to ACE, this allegation is insufficient to establish the breach of any duty by Anderson because the Complaint also alleges that the employees reported their resignations on their own. Complaint ¶ 7 ("[E]ach of the Surety Employees sent an e-mail" tendering their resignations). ACE does not allege that the subordinate employees secretly resigned or delayed in tendering resignations once they decided to resign. Nor does ACE allege that the employees gave insufficient notice to ACE, that ACE had any ability to stop the resignations if it had learned of them earlier, or that ACE's failure to learn of the resignations sooner was, in any other way, relevant. *Sensus*, 2011 WL 2650028, at *4 ("Where well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but has not shown – the complainant is entitled to relief.") (citation omitted).

Plaintiff, likewise, cannot establish the second element of the claim because nowhere in the Complaint does plaintiff allege that OneBeacon Holdings knew of any breach of the duty of loyalty by the "Surety Employees" while they were employed with ACE. *Howard Hess Dental Labs., Inc.*, 602 F.3d at 255 (affirming dismissal of claims where well-pled factual allegations were insufficient to infer "knowledge"). Finally, plaintiff has not adequately alleged the "substantial assistance" element of the claim. "Substantial assistance is typically found in situations where ***facts are pled*** or proved which clearly demonstrate active encouragement to commit the tortious conduct." *Cruz v. Roberts*, 2005 WL 1349615, at *2-3 (Pa. Com. Pl. Jan. 26, 2005) (sustaining demurrer and dismissing claim that owners of day care center were liable in tort for "aiding and abetting" janitor who allegedly committed sexual assault, because claim failed to allege facts that would establish substantial assistance element of claim) (emphasis added); *Thompson v. Glenmede Trust Co.*, 1993 WL 197031, at *9 (E.D. Pa. June 8, 1993)

(dismissing aiding and abetting fiduciary duty claim where plaintiff did not adequately allege substantial assistance in effecting an alleged breach). For all of these reasons, Count IV fails to state a claim upon which relief may be granted, and should be dismissed.

IV. THE COMPLAINT FAILS TO STATE A CLAIM FOR "TORTIOUS INTERFERENCE/INTENT TO HARM"

Plaintiff's Complaint fails to allege facts sufficient to establish its claim against OneBeacon Holdings for "Tortious Interference/Intent to Harm." *See* Complaint (Count V) ¶¶ 41-45. Paragraphs 41 through 45 are completely devoid of substance and consist entirely of the precise types of bald allegations and legal conclusions that the U.S. Supreme Court has held are insufficient to survive a motion to dismiss pursuant to Rule 12(b)(6). *See Iqbal*, 556 U.S. at 678 ("'naked assertion[s]' devoid of 'further factual enhancement'" are insufficient to state a claim for relief) (quoting *Twombly*, 550 U.S. at 557). Specifically, Count V alleges that One Beacon Holdings "induced the Surety Employees to leave their employment with ACE and to work instead for OneBeacon," to "cripple" ACE and obtain its trade secrets. Complaint ¶¶ 42-44.

It is well established in Pennsylvania that: "[T]he offering of employment to a person under a contract, terminable at the will of either, with another is not actionable in and of itself." *Albee Homes, Inc. v. Caddie Homes, Inc.*, 207 A.2d 768, 771 (Pa. 1965) (citations omitted). Thus, efforts by OneBeacon Holdings' affiliate in hiring talented employees for the purpose of starting a new line of surety business is appropriate competition, commonplace practice, and entirely fair absent some wrongdoing. Indeed, ACE itself is presently engaged in a similar effort.[6] Accordingly, OneBeacon Holdings' alleged hiring of ACE's employees is not actionable

[6] On August 30, 2012, for example, ACE announced the expansion of its Surety business in Europe in a press release on its website. http://news.acegroup.com/news/acegroup/

(footnote continued on next page)

under Pennsylvania law unless plaintiff can plead and prove facts sufficient to establish that OneBeacon Holdings "systematically induced" ACE's employees to leave "'for the sole purpose of crippling and destroying [plaintiff] or to commit wrongs against it." *Brubaker Kitchens, Inc. v. Brown*, 2006 WL 2381767, at *5 (E.D. Pa. Aug. 15, 2006) (granting summary judgment to defendant on claim for tortious interference where plaintiff presented no evidence that defendant's purpose in meeting with employees was to "systematically induce" them to start a competing business to "cripple" their former employer), *aff'd*, 280 F. App'x 174 (3d Cir. 2008); *Albee Homes, Inc.*, 207 A.2d at 771 (plaintiff must establish that the purpose of the hiring was to destroy "an ***integral part of a competitive business organization*** rather than obtain the services of particularly gifted employees," or to have the employees "commit wrongs, such as disclosing their former employer's trade secrets or enticing away his customers") (emphasis added; citation omitted).

Plaintiff alleges no such facts in Count V or elsewhere in the Complaint. For example, plaintiff's only factual allegation against OneBeacon Holdings to support the element of "systematic inducement" is that it hired an executive recruiting firm to locate and "recruit the Surety Employees for employment with OneBeacon." Complaint ¶ 15. This allegation does not establish any "systematic" activity by OneBeacon Holdings, and there is nothing tortious about using an executive search firm to find qualified candidates for employment. In fact, OneBeacon Holdings' affiliate that hired the "Surety Employees," has a financial interest privilege in seeking

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20120830005507/en/ACE-expands-Surety-Practice-Continental-Europe-Appoints (last visited Aug. 30, 2012) (announcing ACE is expanding "its international surety capabilities into its Continental Europe region"). ACE's press release describes the ACE Group as "one of the world's largest multiline property and casualty insurers" with "operations in 53 countries." *Id.* ACE is no mom-and-pop operation vulnerable to being crippled by the departure of eight employees. This Court may consider matters of public record on a motion to dismiss. *See Oshiver v. Levin, Fishbein, Sedran & Berman*, 38 F.3d 1380, 1385, n.2 (3d Cir. 1994).

qualified candidates for its new surety department. *See, e.g., Simon Prop. Group,* 682 F. Supp. 2d at 512 (granting motion to dismiss tortious interference claim where plaintiff "fail[ed] to show how [defendant's] actions are not protected by the judicial and/or financial interest privilege"); *Geib v. Alan Wood Steel Co.,* 419 F. Supp. at 1209 (granting summary judgment to defendant on tortious interference claim where conduct at issue was covered by the financial interest privilege).

Nor does the Complaint allege any facts that would support an inference that OneBeacon Holdings sought to destroy an integral part of ACE's business organization, and any such allegation would be false. *See supra*, n.6. The Complaint does not allege that OneBeacon Holdings even knew of ACE's surety employees before allegedly hiring an executive recruiting firm to search for employment candidates. Plaintiff's allegation regarding the hiring of an executive recruiting firm is consistent with a legitimate business development plan rather than any notion that OneBeacon Holdings intended to "cripple or destroy the surety business of its competitor ACE." Complaint ¶ 43.

Because the allegations of Count V for "Tortious Interference" are purely conclusory, this claim is also subject to dismissal.

CONCLUSION

For the reasons set forth herein, plaintiff's Complaint should be dismissed in its entirety, and the current, expedited discovery schedule in this action should be vacated as contemplated by the Court's August 28th Order (Doc. No. 13).

Dated: August 31, 2012

Respectfully submitted,

/s/ Michael Lieberman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 31, 2012 I caused a true and correct copy of the foregoing OneBeacon U.S. Holdings, Inc.'s Motion to Dismiss the Complaint and supporting Memorandum of Law to be served on the following via electronic filing and via e-mail:

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