

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MARK SCOTT CIRIELLO, :
 :
 Plaintiff, : **ACTIONS NOT CONSOLIDATED**
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 v. : Civil Action No. 02-1393-JJF
 : Civil Action No. 02-1394-JJF
 U.S. SUPREME COURT, et. al, : Civil Action No. 02-1395-JJF
 : Civil Action No. 02-1396-JJF
 Defendants. :
 :
 :

Mark Scott Ciriello, Pro Se Plaintiff.

Colm F. Connolly, Esquire, United States Attorney, Paulette K. Nash, Esquire, Assistant United States Attorney, UNITED STATES DEPARTMENT OF JUSTICE, Wilmington, Delaware.
Attorney for the Federal Defendants.

Laurence V. Cronin, Esquire of SMITH, KATZENSTEIN, & FURLOW, Wilmington, Delaware.
Of Counsel: Dean R. Lospinoso, Esquire of CUYLER BURK, LLP, Parsippany, New Jersey.
Attorney for Defendant Prudential Insurance Company of America.

Scott A. Holt, Esquire of YOUNG CONAWAY STARGATT & TAYLOR, LLP, Wilmington, Delaware.
Attorney for Defendant Waterbury Hospital.

Dennis D. Ferri, Esquire of MORRIS, JAMES, HITCHENS & WILLIAMS LLP, Wilmington, Delaware.
Attorney for Defendant St. Mary's Hospital.

Stephen P. Casarino, Esquire of CASARINO, CHRISTMAN & SHALK, Wilmington, Delaware.
Attorney for Defendant American Medical Response.

MEMORANDUM OPINION

August 12, 2003

Wilmington, Delaware

Farnan, District Judge.

Pending before the Court are the Federal Defendants' Motions To Dismiss (Civil Action No. 02-1393-JJF, D.I. 4; Civil Action No. 02-1394-JJF, D.I. 11; Civil Action No. 02-1395-JJF, D.I. 4; Civil Action No. 02-1396-JJF, D.I. 8) the Complaints filed by Plaintiff, Mark Scott Ciriello. For the reasons discussed, the Federal Defendants' Motions To Dismiss will be granted.

BACKGROUND

Plaintiff filed four complaints in this Court naming several defendants that are part of the federal government. In each of Plaintiff's Complaints, he refers to "impeachment" and makes "settlement" demands in various sums. Plaintiff's Complaints also reference other actions that he claims he filed in the Southern District of New York and the District of New Jersey.¹

Although each Complaint contains the reference to "impeachment," each Complaint deals with a different topic. In his Complaint in Civil Action No. 02-1393-JJF, Plaintiff alleges that he has diamond and 24-karat gold assets and that his assets are worthless, because of "false-essaying." Thus, Plaintiff alleges that he "should be wealthy, but is not because of false-essaying [sic] of assets . . ." (Civil Action No. 02-1393-JJF, D.I. 1 at 2). In his Complaint in Civil Action No. 02-1394-JJF,

¹ The Federal Defendants have informed the Court that they have only been able to locate an action filed by Plaintiff in the District of New Jersey.

Plaintiff demands relief under several insurance policies in various sums. There are no references to the Federal Defendants in this Complaint. (Civil Action No. 02-1394-JJF, D.I. 1 at 2). In the Complaint filed in Civil Action No. 02-1395-JJF, Plaintiff discusses a "transparent photosynthesis gaseous reaction," including charts and tables. (Civil Action No. 02-1395-JJF, D.I. 1). And, in the Complaint filed in Civil Action No. 02-1396-JJF, Plaintiff alleges dissatisfaction with other lawsuits he has filed. (Civil Action No. 02-1396-JJF, D.I. 1).

In lieu of filing an Answer to the Complaints, the Federal Defendants moved to dismiss Plaintiff's Complaints pursuant to Rule 8 and Rule 12 of the Federal Rules of Civil Procedure. Specifically, the Federal Defendants contend that the Complaints fail to (1) meet the notice pleading requirements of Rule 8; (2) establish subject matter jurisdiction pursuant to Rule 12(b)(1); (3) allege venue pursuant to Rule 12(b)(3); and (4) establish any claim for relief pursuant to Rule 12(b)(6). Plaintiff did not respond to the Federal Defendants' Motions, and the Court subsequently ordered Plaintiff to file an Answering Brief within twenty-days of the Court's order. By the Order, the Court further advised Plaintiff that the matter would be decided on the record before it if no Answering Brief was filed. To date, Plaintiff has failed to file a response to the pending Motions To Dismiss. Accordingly, the Court will proceed to resolve this

matter on the record before it.

DISCUSSION

After reviewing Plaintiffs' Complaints in light of the arguments raised by the Federal Defendants, the Court concludes that dismissal is appropriate on two grounds. Specifically, the Court concludes that Plaintiff cannot establish subject matter jurisdiction under Rule 12(b)(1) and cannot state a claim for relief under Rule 12(b)(6).

Pursuant to Rule 12(b)(1), the court may dismiss a lawsuit for failure to establish subject matter jurisdiction. Where, as here, the defendants have not filed an answer to the complaint, the attack on subject matter jurisdiction is considered a facial attack. Lexington Insurance Co. v. Forrest, 2003 WL 21087014, *6 (E.D. Pa. May 6, 2003). When considering a facial attack under Rule 12(b)(1), the court must accept the allegations of the complaint as true and draw all reasonable inferences in favor of the plaintiff. Id.

By their Motion, the Federal Defendants contend that the Court lacks subject matter jurisdiction, because Plaintiff lacks standing to assert his claims. The doctrine of standing consists of two parts: (1) the case or controversy requirement stemming from Article III, Section 2 of the Constitution, and (2) a subconstitutional prudential element. Forrest, 2003 WL at *6. Defendants challenge the constitutional aspect of standing and

contend that Plaintiff cannot establish a justiciable case or controversy.

To establish constitutional standing, the plaintiff must show that (1) he suffered an "injury-in-fact", i.e. an injury which is concrete and particularized, and actual and imminent, not conjectural or hypothetical; (2) a causal connection exists between the injury and the challenged action of the defendant; and (3) the injury will be redressed by a favorable decision. See Pryor v. Nat'l Collegiate Athletic Ass'n, 288 F.3d 548, 561 (3d Cir. 2002). The burden of establishing standing rests with the plaintiff. Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992) (citations omitted).

The Court concludes that Plaintiff has failed to establish the standing requirements. Plaintiff fails to allege a concrete injury and asserts vague and confusing allegations about the state of his wealth, certain insurance policies, "transparent photosynthesis gaseous reaction," and prior court cases he filed. Plaintiff also fails to allege a causal connection between claims and the conduct of any of the Federal Defendants. Because Plaintiff has failed to establish that he has standing to pursue these actions, the Court concludes that dismissal of these actions is appropriate under Rule 12(b)(1).

In addition, the Court concludes that dismissal is appropriate pursuant to Federal Rule of Civil Procedure 12(b)(6).

When considering a motion to dismiss pursuant to Rule 12(b)(6), the Court must accept, as true, all the allegations in the complaint and must draw all reasonable factual inferences in the light most favorable to the plaintiff. Neitzke v. Williams, 490 U.S. 319, 326 (1989). However, the Court is not required to credit "bald assertions" or "legal conclusions" when deciding a motion to dismiss. Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997). Pro se pleadings are held to a less stringent standard than formal pleadings drafted by lawyers. Becker v. C.I.R., 751 F.2d 146, 149 (3d Cir. 1984). Thus, "[a] pro se complaint may be dismissed for failure to state a claim only if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Milhouse v. Carlson, 652 F.2d 371, 373 (3d Cir. 1981) (quoting Haines v. Kerner, 404 U.S. 519 (1972)).

In this case, Plaintiff's factual allegations are frivolous and fanciful in nature, and Plaintiff makes no coherent, legally cognizable claims against the Federal Defendants. See e.g. Crumpacker v. Civiletti, 90 F.R.D.326, 333 (N.D. Ind. 1981) (dismissing cause of action where pleadings consisted of bare conclusions that illegal searches occurred and did not allege nature of defendant's conduct or any resultant damage suffered by plaintiff). Further, Plaintiff has failed to file any response to the pending Motions To Dismiss. Given the frivolous nature of

Plaintiff's allegations and his failure to respond to the Federal Defendants' Motions, the Court further concludes that any amendments to Plaintiff's Complaints would be futile. See e.g. Cowell v. Palmer Township, 263 F.3d 286, 296 (3d Cir. 2001) (recognizing that leave to amend should be freely given under Rule 15(a), but that leave to amend may be denied if the amendment would be futile). Accordingly, the Court will dismiss Plaintiff's Complaints pursuant to Rule 12(b)(6) for failure to state a claim upon which relief may be granted.

CONCLUSION

For the reasons discussed, the Federal Defendants' Motions To Dismiss filed in Civil Action Nos. 02-1393, 02-1394, 02-1395, and 02-1396 will be granted.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MARK SCOTT CIRIELLO, :
 :
Plaintiff, : **ACTIONS NOT CONSOLIDATED**
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v. : Civil Action No. 02-1393-JJF
 : Civil Action No. 02-1394-JJF
U.S. SUPREME COURT, et. al, : Civil Action No. 02-1395-JJF
 : Civil Action No. 02-1396-JJF
Defendants. :
 :
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ORDER

At Wilmington, this 12th day of August 2003, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. The Federal Defendants' Motion To Dismiss (D.I. 4) in Civil Action No. 02-1393-JJF is GRANTED.
2. The Federal Defendants' Motion To Dismiss (D.I. 11) in Civil Action No. 02-1394-JJF is GRANTED.
3. The Federal Defendants' Motion To Dismiss (D.I. 4) in Civil Action No. 02-1395-JJF is GRANTED.
4. The Federal Defendants' Motion To Dismiss (D.I. 8) in , Civil Action No. 02-1396-JJF is GRANTED.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE