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The Unclean Hands and In Pari Delicto Doctrines

By Barry Salkin

In this article, the author discusses the unclean hands doctrine and the in pari delicto doctrine, noting that although they appear infrequently in ERISA cases, practitioners should be aware of their potential availability.

The unclean hands doctrine,[1] a "notoriously hoary and murky doctrine whose contours are not always clear,"[2] is an equitable doctrine that is the companion principle to the common law doctrine of in pari delicto,[3] a disfavored defense.[4] Both of these state law defenses[5] are preempted by ERISA,[6] although there is no federal common law definition of the unclean hands doctrine.[7] The unclean hands doctrine is designed, as is the in pari delicto doctrine, to prevent culpable plaintiffs from bringing suit.[8] It is a fundamental principle of equity that he who comes into equity must come with clean hands."[9] Thus, courts frequently state that the doctrine of unclean hands closes the doors of a court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief.[10]

In *In re Garfinkle*,[11] the U.S. Court of Appeals for the Eleventh Circuit wrote that, "The equitable doctrine of unclean hands provides that one who has been guilty of fraud, injustice or unfairness will appeal in vain to a court of conscience, even though he may have kept himself strictly within the law."[12] Wrongful conduct includes acts that are "inequitable, unfair, dishonest, fraudulent, unconscionable, or in bad faith,"[13] or willful[14] or illegal.[15]

The most frequently stated comment on the unclean hands doctrine is the Supreme Court's observations in *Precision Instrument Mfg. Co. v. Automotive Maintenance Machine Co.*[16] The guiding doctrine in this case is the equitable maxim that "he who comes into equity must come with clean hands." This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the manner in which he seeks relief, however improper may have been the

Barry L. Salkin, a member of the Editorial Advisory Board of *Benefits Law Journal*, is of counsel at The Wagner Law Group, concentrating his practice in ERISA and employee benefits law. He is a fellow of the American College of Employee Benefits Counsel and is the author of numerous articles and book chapters dealing with employee benefits issues. Mr. Salkin may be contacted at bsalkin@wagnerlawgroup.com.

conduct of defendant. That doctrine is rooted in the historic concept of a court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith.[17] The rationale of the doctrine is that "since equity tries to enforce good faith in defendants, it no less stringently demands the same good faith from plaintiffs."[18]

As expressed by the U.S. Court of Appeals for the Seventh Circuit, the equitable doctrine of unclean hands provides that "a court will not adjudicate a case if a judgment for the plaintiff would encourage or reward criminal or other unlawful activity."[19] Thus, a "plaintiff cannot rely on his own wrongful act to make a recovery."[20] While the primary beneficiary of the unclean hands doctrine is defendants, another beneficiary is the courts, as application of the unclean hands doctrine "protects judicial integrity and promotes justice. It protects judicial integrity because allowing a plaintiff with unclean hands to recover in an action creates doubts as to justice provided by the judicial system. Thus, precluding recovery to the unclean plaintiff protects the court's, rather than the opposing party's interest."[21]

Similarly with respect to the in pari delicto doctrine, the Supreme Court in *Bateman Eichler, Hill Richards, Inc. v. Berner*,[22] explained that "the doctrine is grounded on two premises-first, that courts shouldn't lend their good offices to mediating disputes among wrongdoers and second, that denying judicial relief to an admitted wrongdoer is an effective means of deterring illegality."[23]

ESTOPPEL

Procedurally, courts generally consider an unclean hands defense as merely an alternate designation of a traditional theory of estoppel.[24] The doctrine is not a binding or absolute doctrine, but rather one which a court may apply in its discretion,[25]and in exercising that discretion the interest of the public is of paramount importance.[26] In order to invoke the unclean hands doctrine defense, some courts require a defendant to establish:

(i) That a party is seeking affirmative relief;

(ii) Is guilty of conduct involving fraud, deceit, unconscionability, or bad faith;

(iii) Directly related to the matter at issue;

(iv) That injures the other party; and

(v) Affects the balance of equities between the litigants.[27]

The unclean hands doctrine renders a contract or agreement unenforceable.[28] although the ratification doctrine could apply to unclean hands.[29] Defendants have the burden of establishing a plaintiff's inequitableness or bad faith relative to the matter at issue,[30] and at least in the U.S. Court of Appeals for the Sixth Circuit, the conduct establishing unclean hands must be established by clear, unequivocal, and convincing evidence.[31]

Similarly, with respect to the in pari delicto defense, on a motion to dismiss, a defendant must establish conclusively that the defense applies.[32] The doctrine does not apply to every unconscientious act or inequitable conduct on the part of a plaintiff.[33] It is generally a fact specific determination, which is why motions for summary judgment on the defense are frequently denied.[34]

In *Pfizer, Inc v. International Rectifier Corp.*,[35] the U.S. Court of Appeals for the Eighth Circuit stated that application of the unclean hands doctrine is an "extreme sanction . . . [which] requires a [substantial] showing of fault, willfulness, or bad faith."[36] Similarly, courts in the U.S. Court of Appeals for the Second Circuit are generally reluctant to invoke the unclean hands doctrine in all but the most egregious situations.[37] As noted above, under the traditional definition of unclean hands, a defendant seeking to interpose the defense of unclean hands must show that the plaintiff's fault is substantially equal to that of the defendant.[38] In *Malbco Holdings, LLC v. Amco Ins. Co.*, the Oregon district court indicated that "In quantitative terms, the misconduct must be serious enough to justify a court's denying relief on an otherwise valid claim. Even equity does not require saintliness."[39]

In some jurisdictions, the standard that defendants must satisfy is more flexible. For example, Missouri courts have held that "the doctrine should be applied when it promotes right and justice by considering all of the facts and circumstances of a particular case."[40] Mere negligence is not enough to trigger the unclean hands doctrine,[41] but one's conduct need not rise to the level of criminal activity to trigger the doctrine.[42]

In applying the unclean hands doctrine what is material is not that the plaintiff's hands are dirty, but that the plaintiff dirtied them in acquiring the rights the plaintiff now asserts, or that the manner of dirtying renders inequitable the assertion of such rights against the defendant."[43] Thus, "misconduct unrelated to the claim for which it is asserted as a defense does not constitute unclean hands."[44] This relationship requirement, which courts and commentators have expressed in different ways,[45] has resulted in the narrowness of the doctrine's application.[46] Similarly, courts typically do not apply the doctrine of unclean hands where a defendant has suffered no harm as the result of plaintiff's action.[47]

AFFIRMATIVE EQUITABLE DEFENSE

Unclean hands is an affirmative equitable defense,[48] not a cause of action.[49] Thus, the equitable estoppel defense is unavailable if a party has unclean hands.[50] Because the affirmative defense of unclean hands is equitable in nature, it cannot be raised as a defense to legal claims.[51] There may be no heightened pleading stands for the unclean hands doctrine.[52] It may be sufficient if the answer puts the plaintiff on notice.[53] An affirmative defense such as unclean hands is rarely an obstacle to typicality in seeking to defeat a class action.[54]

It would be very difficult successfully to raise the unclean hands doctrine against the Department of Labor or other government agency. As the court stated in *Donovan v. Dorfman*,[55] there are substantial policy considerations militating against inhibiting enforcement of an important regulatory scheme based on some alleged unclean hands of the agency charged with` enforcement.[56] Generally, "the doctrine of unclean hands may not be invoked against a government agency which is attempting to enforce a Congressional mandate in the public interest."[57]

While there was some initial reluctance to apply the unclean hands doctrine to enforcement suits brought under ERISA, "because its application would significantly harm innocent parties, namely, participants and beneficiaries,"[58] federal courts have considered and applied the doctrine of unclean hands to bar a plaintiff's recovery in an ERISA action.[59] If a claim is equitable in nature under ERISA Section 502(a)(3), the unclean hands doctrine is available as a defense.[60]

However, the Supreme Court's decision in *US Airways v. McCutchen*[61] limits the application of the unclean hand's doctrine under ERISA. While *McCutchen* does not specifically reference the unclean hands doctrine, the unclean hands doctrine is similar to the doctrine of unjust enrichment, and thus cannot be used to defend against an overpayment counterclaim based on plan language.[62]

In *Ellenburg v. Brockway*,[63] the U.S. Court of Appeals for the Ninth Circuit applied the doctrine of unclean hands in an ERISA action to bar a plaintiff from recovering early retirement benefits under a defined benefit pension plan. When plaintiff applied for benefits, he had not yet attained the age for early retirement eligibility. However, in documents filed in connection with his application for benefits, the plaintiff stated that his date of birth was three years earlier than his true date of birth. After the plan trustees determined that plaintiff's date of birth was incorrect, they denied early retirement benefits to the plaintiff, and plaintiff brought suit under ERISA to recover them.

The Ninth Circuit affirmed the district court's judgment in favor of the plan trustees because the plaintiff proceeded in bad faith in applying for early retirement benefits when he knew that he was not age

eligible. The court concluded that the plaintiff's true date of birth was known to him. Therefore, when the plaintiff submitted documents that he knew to be in conflict with other records of his birth date in an attempt to receive retirement benefits, he acted in bad faith with respect to his early retirement benefits, the right which he was now asserting again. Because the plaintiff dirtied his hands in acquiring the right that he was now asserting, the Ninth Circuit concluded that equity barred him from seeking equitable relief.

In *Anweiler v. Amer. Elec. Power Service Corp.*, the plaintiff alleged that defendants breached their fiduciary duties under ERISA and sought imposition of a collective trust on insurance policy proceeds as equitable relief under ERISA Section 502(a)(3). However, the Seventh Circuit relied on the doctrine of unclean hands to conclude that the plaintiff was not entitled to such equitable relief because the record showed that she did not come with clean hands.

In that case, the plaintiff's husband received double disability benefits – from his insurance company and the Social Security Administration – for a period of six years before the insurance company learned of the fact, which resulted in the insurance company's overpayment of benefits to him. The court stated that it was obvious from plaintiff's own arguments that she knew at the time that her husband should not receive double benefits. Therefore, despite defendant's breach of fiduciary duty, plaintiff had no equitable claim to the proceeds from her husband's life insurance policy.

The Second Circuit's decision in *Holm v. First Unum Life Ins. Co.*[64] provides an example of an ERISA case in which application of the unclean hands doctrine was rejected. In that case, plaintiff appealed the district court's decision granting summary judgment to the defendant, based on the plaintiff's failure to exhaust his administrative remedies. Plaintiff asserted that the insurance company had unclean hands because it was late in notifying him that his claim for disability benefits was denied. He further asserted that it would be inequitable for the defendant to defeat his cause of action based on untimeliness when it also did not meet notice deadlines proscribed in the plan.

Although the Second Circuit considered the unclean hands doctrine, it concluded that the doctrine was inapplicable to the defendant on the facts of the case, because the defendant was neither a plaintiff seeking to open the doors of a court of equity, nor a party seeking any affirmative relief from the court, such as by asserting a counterclaim. Further, even assuming arguendo that the doctrine could in some manner be applicable to the defendant in this case, there was nothing in the record to indicate that defendant's conduct could be treated as a transgression of equitable standards of conduct. Courts have also held that a husband's influence in obtaining service for his

wife did not amount to unclean hands,[65] nor is unclean hands grounds for suspension of pension rights.[66]

APPLYING THE DOCTRINE

In applying the unclean hands doctrine, it is important to identify the party with the alleged dirty hands. For example, a plan and plan sponsor are distinct legal entities, and even if the plan sponsor is guilty of equitable misconduct, the plan will generally be innocent of any wrongdoing.[67]

Similarly, in *McLemore v. Regions Bank*,[68] the Sixth Circuit rejected the defendant's attempt to raise an unclean hands defense against a trustee suing on behalf of ERISA plans, because the "ERISA plans are innocent of any wrongdoing" and "any recovery would benefit only the defrauded plans, and that barring the claims serves no deterring function."[69] In *Castle v. Cohen*,[70] the U.S. District Court for the Eastern District of Pennsylvania wrote that "When acting in equity, a court must never lose sight of public policy as enunciated by Congress. . . . In enacting ERISA, Congress was greatly concerned about the pension rights due to workers for long years of service with their employer. The trustees want to purchase a majority interest in PSA to benefit the employees. To punish the employees for any wrongdoing of the trustees would violate the Congressional policies."

There is a split of authority with respect to assertion of the unclean hands doctrine in collection actions under ERISA Section 515.[71] District courts that permit it state that ERISA Section 515 may foreclose certain employer defenses which are based on the conduct of the parties who negotiated and executed the writing but may not foreclose inquiry into the action of the Fund itself in asserting those rights.[72] As explained by the district court in *Upstate New York Engineers Health Fund v. John F. and John P. Wenzel Contractors, Inc*.[73] multiple courts in the Second Circuit have recognized an important distinction between the defenses considered in *Benson v. Browne Moving and Storage, Inc*.,[74] which depend on the formation and enforcement

of the collective bargaining agreement, ands defenses focused on the actions of the funds, which typically are not parties to such agreements.

CONCLUSION

While the unclean hands doctrine and the in pari delicto doctrine appear infrequently in ERISA cases, practitioners should be aware of their potential availability.

NOTES

1. This article is intended to provide a high-level view of the unclean hands doctrine and the in pari delicto doctrine for practitioners. For a much more detailed analysis of the unclean hands doctrine, see Zachariah Chafee, Jr., "Coming into Equity with Clean Hands," 47 Michigan Law Rev. 877 (1948).

2. Osterberger v. Hites Construction Company, 599 S.W. 2d 221,229 (Mo. Ct. App. 1980); Nelson v. Emmert, 105 S.W. 3d 563,568 (Mo. Ct. App. 2003); Cigna Corp v. Bricker, 103 F. 4th 1336 (8th Cir. 2024).

3. Tarasi v. Pittsburgh National Bank, 555 F. 2d 1152,1156, n. 9 (3d Cir.), cert den. 434 U.S. 965 (1977); McLemore v. Regions Bank, 682 F. 3d 414,56 Bankr. Ct. Dec. 155 (6th Cir. 2012); Castle v. Cohen, 676 F. Supp. 620(E.D. Pa. 1987). The common law defense of in pari delicto derives from the Latin phrase "in pari delicto potior est conditio defenditis," which means literally, in the case of mutual fault, the position of the defending party is the better one. In re Vantage Benefits Administrators, Inc. v. Matrix Trust Company, 2024 WL 3810974 (N.D. Tex. August 13, 2024).

The in pari delicto doctrine has evolved over time. In its classic formulation, the defense was narrowly limited to situations in which the plaintiff truly bore at least substantially equal responsibility for the injury. However, notwithstanding these traditional limitations, many courts have given the in pari delicto defense a broad application to bar actions where plaintiffs simply have been involved generally in the same form of wrongdoing as defendants. See Bateman Eichler Hill Richards, Inc. v. Berner, 472 U.S. 299,306 (1985). This doctrinal evolution "accounts for the fact that in some states, the doctrine as applied under the state common law, is applied more strictly to bar a plaintiff's claims while in others the doctrine has developed to be interpreted flexibly and to take into account the facts and circumstances of each case to fashion an equitable result." In re Vantage Benefits Administrators, Inc. v. Matrix Trust Company, infra. Compare cases such as In re KDI Holdings, Inc., 277 B.R. 493,518 (Bankr. S.D.N.Y. 1999) and Antioch Litigation Trust v. McDermott, Will & Emery LLP, 738 F. Supp. 2d. 758 (S.D. Ohio 2010) (The in pari delicto doctrine only applies when plaintiff bears equal fault or more fault than the defendants, for the alleged wrong) Tarasi v. Pittsburgh National Bank, supra and Castle v. Cohen, supra (defendant wishing to interpose the defense of unclean hands must show that the plaintiff's fault is substantially equal to that of the defendant) with Bubis v. Blanton, 885 F. 2d 317,321(6th Cir. 1989) and Memorex Corp v. IBM, 555 F. 2d 1379,1382 (9th Cir. 1997) (The doctrine of in pari delicto refers to the plaintiff's participation in the same wrongdoing as the defendants).

4. Golden v. Kentile Floors, Inc., 512 F. 2d 838, fn 11 (5th Cir. 1975); PermaLife Mufflers, Inc. v. International Parts Corp., 302 U.S. 134 (1968); Alders v. AFA Corp., 353 F. Supp. 654,656 (S.D. Fla. 1973).

5. Jones v. Wells Fargo, N.A., 666 F. 3d 955,965 (5th Cir. 2012) (The in pari delicto doctrine is "an equitable affirmative defense which is controlled by state common law."). See also Pinter v. Dahl, 486 U.S. 622,632 (1988); In re Food Mgmt. Group., 380 B.R. 677,693 (S.D.N.Y. 2008); In re Vantage Benefits Administrator, 2021 WL 1815065 (N.D. Tex. May 5, 2021).

6. Dairy Employees Union Local No. 17 v. Poel, 2014 WL 12884088 (C.D. Cal. Sept. 15, 2014).

7. See fn. 27, infra, and accompanying text.

8. Pinter v. Dahl, supra, n. 5; McLemore v. Regions Bank, supra, n. 3.

9. Herme Intl, v. Lederer de Paris Fifth Avenue, Inc., 219. F. 3d 104,107 (2d Cir. 2000).

10. Lucey v. Workmens Comp. App. Bd., 557 Pa. 272,732 A. 2d 1201,1204 (Pa. 1999); Graphic Sciences, Inc. v. Intl. Mogul Mines, Ltd. 397 F. Supp. 112,127 (D.D.C. 1974); Dairy Employees Union Local N. 17 v. Poel, supra, n. 6; Ellenburg v. Brockway, Inc., 763 F. 2d 1091 (9th Cir. 1985); Evans v. Sun Life Health & Ins. Co., 2013 WL 12084743 (C.D. Cal. March 22, 2013). But see Admin. Committee for the Wal-Mart Stores, Inc. Associate Health & Welfare Plan v. Salazar, 2007 WL 2409513, fn.14 (D. Ariz. Aug. 20. 2007) ("The unclean hands doctrine closes the doors of equity to one tainted with bad faith is an ethical ideal rather than a rule of law.").

11. 672 F. 2d 1340 (11th Cir. 1982).

12. Id. at 1346-47, fn. 7. See also Riggs v. Smith, 953 F. Supp. 389 (S.D. Fla. 1997).

13. Makoul v. The Prudential Ins. Co. of America, 56 EBC 1220, 2013 WL 3874045 (N.D. Ill. July 25,2013); Young v. Verizon Bell Atlantic Cash Balance Plan, 667 F. Supp. 2d 850,905 (N.D. Ill. 2009).

14. Lincoln National Insurance Co. v. Chitkin, 879 F. Supp. 841 (S.D. Cal. 1995).

15. Administrative Committee of the Wal-Mart Associates Health and Welfare Plan v. Willard, 32 EBC 1595, 302 F. Supp. 2d 1267 (D. Kan. 2004).

16. 324 US 806 (1945).

17. Id. at 814. See also Trustees of the New York District Council of Carpenters Pension Fund, Welfare Fund Annuity Fund and Apprenticeship Journeyman Retraining Educational and Industry Fund v. MCF Associates, 530 F. Supp. 3d 460,464 (S.D.N.Y. 2021); Holm v. First Unum Life Ins. Co., 7 Fed. Appx 40,41 (2d Cir. 2001).

18. Dunlop-McCullen v. Local 1-S AFL- CIO- CLC, 149 F. 3d 85,90 (2d Cir. 1998).

19. Schlueter v. Latch, 683 F. 3d 350,355 (7th Cir. 2012); Perez v. Wallis, 2014 WL 7476782 (N.D. Ill. Dec. 30, 2014).

20. Christensen v. Felten, 322 F. 2d 323 (9th Cir. 1963).

21. Kendall Jackson Winery Ltd v. Superior Court (E & J Winery), 76 Cal. App. 4th 970, 978 (1999).

22. Supra, n. 3.

23. Id. at 306. See also Rogers v. McDorman, 521 381,385 (5th Cir. 2008).

24. Martin v. Nationsbank of Georgia, N.A., 16 EBC 2136 (N.D. Ga. April 6, 1993); Walls v. Mississippi State Department of Public Welfare, 730 F. 2d 306, 324 (5th Cir. 1984).

25. Administrative Committee of the Wal-Mart Associates Health & Welfare Plan v. Willard, supra, n. 15; Henry McClintock, Principles of Equity Jurisprudence, (2d Ed. 1948).

26. Precision Instrument Mfg. Co. v. Automotive Maintenance Machine Co., supra, n. 16 and 17; Rhoda v. Rhoda, 2017 WL 11530950 (S.D.N.Y. June 22, 2017); Castle v. Cohen, supra, n. 3.

27. Imprisoned Citizens Union v. Schapp, 11 F. Supp. 2d 586,608 (E.D. Pa. 1998), aff'd 169 F. 3d 178 (3d Cir. 1999); Holm v. First Union Life Ins. Co., supra, n. 17; Ciba-Geigy

Corp. v. Bolar Pharmaceutical Co., 141 F. 2d 844,855 (3d Cir. 1984), cert. den. 471 U.S. 1137 (1985); Rhoda v. Rhoda, supra, n. 26 (collecting cases).

28. Mente Chevrolet Oldsmobile, Inc., v. GMAC, 451 Fed. Appx. 214 (3d Cir. 2011); Romero v. Allstate Ins. Co., 2015 WL 7014576 (E.D. Pa. Nov. 12, 2015).

29. Romero v. Allstate Ins. Co., supra, n. 28.

30. Quest Diagnostics v. Bomani, 55 EBC 2365, 2013 WL 3148651 (D. Conn. June 19, 2013); Motorola Credit Co. v. Uzan, 561 F. 3d 123,129 (2d Cir. 2009); Fuddruckers, Inc. v. Doc's B.R. Others, Inc., 826 F. 2d 837,847 (9th Cir. 1987) (To prevail on a defense of unclean hands, a defendant must show that the plaintiff's conduct is inequitable.).

31. Kearney & Trecker Corp. v. Cincinnati Milacron, Inc. 562 F. 3d 365,371 (6th Cir. 1977); Sherfel v. Gassman, 49 EBC 2564, 748 F. Supp. 2d 776 (S.D. Ohio 2010).

32. In re National Century Fin. Entities, Inc., 617 F. Supp. 2d 700,712 (S.D. Ohio 2009); Nisselson v. Lernout, 469 F. 3d 143,154 (1st Cir. 2006); Antioch Litigation Trust v. McDermott, Will, & Emery, supra, n. 3; In re The Antioch Company, 2011 WL 3664888 (Bankr., S.D. Ohio Sept. 28, 2011); The Unencumbered Assets Trust v. J.P. Morgan Chase Bank, 617 F. Supp. 2d 700,712 (S.D. Ohio 2009), 604 F. Supp 2d 1126,1133 (S.D. Ohio 2009) (same).

33. 2 Pomeroy Equity Jurisprudence Section 399 at 94 (5th ed).

34. Rhoda v. Rhoda, supra, n. 26 (motion for summary judgment denied because of significant factual disputes); Levesque v. Kelly Communications, Inc., No. 91-cv-7045 (DLC) (S.D.N.Y. May 29, 1997) (hotly contested issue of fact made motion for summary judgment inappropriate); California Service Employees Health and Welfare Trust Fund v. G C Theatre Corp. of California, 1998 WL 320846 (N.D. Cal. June 18, 1998) (the "myriad factual issues in dispute"); Board of Trustees of the Laborers Health and Welfare Fund of Northern California v. Turner Group Construction, 2021 WL 516039 (N.D. Cal. Feb. 11, 2021); Beyland v. Rome Cable Corporation, 1998 WL 690926 (N.D.N.Y. Sept. 30, 1998); Spear v. Fenkel, 2016 WL 5661729 (E.D. Pa. Sept. 30, 2016). The same is also true of the in pari delicto defense. See In re Tocihbi, 413 B.R. 523,527 (Bankr. N.D. Tex. 2009) ("intensely factual"); World Capita Comm, Inc. v. Island Capital Mgmt., 389 B.R. 801,810 (M.D. Fla. 2008); Kalisch v. Maple Trade Fin. Corp., 2007 WL 1580049 (Bankr. S.D.N.Y. 2007)(Antioch Litigation Trust v. McDermott Wills, & Emery, supra, n. 3; New York District Council of Carpenters Pension Fund v. Ford, 2013 WL 1454954 (S.D.N.Y. March 26, 2013); Buckley v. DeLoitte & Touche USA, LLP 2007 WL 1491403 (S.D.N.Y. May 26, 2007).

35. 538 F. 2d 180 (8th Cir. 1976), cert. den. 429 U.S. 1949 (1977).

36. Id. at 195.

37. Ruotolo v. the Sherwin Williams Co., 622 F. Supp. 546 (D. Conn. 1985); Markel v. Scovill Mfg. Co., 471 F. Supp. 1244,1255 (W.D.N.Y. 1979), aff'd without opinion 610 F. 2d 807 (2d Cir. 1979).

38. Castle v. Cohen, supra, n. 3; Tarasi v. Pittsburgh National Bank, supra, n. 3

39. 2010 WL 143778 at *5 (D. Ore. January 11, 2010).

40. Sangamon Associated Ltd. v. The Carpenter 1985 Family Partnership, SC 86476 (Mo. S. Ct. May 31,2005); Durwood v. Dubinsky, 361 S.W. 2d 779,791 (Mo. 1962).

41. Eresch v. Braecklein, 133 F. 2d 12,14 (10th Cir. 1943).

42. The Verizon Employee Benefits Committee v. Spiliotis, 2007 WL 9717275 (N.D. Tex. August 9, 2007).

43. Ellenburg v. Brockway, Inc., supra, n. 10, quoting Republic Molding Corp. v. B.W. Photo Util. 319 F. 2d 347,349 (9th Cir. 1963); Curley v. Brignoli Curley Roberts Assoc., 746 F. Supp. 1208, 1219 (S.D.N.Y. 1989) (same).

44. Trustees of the New York City District Council of Pension Fund, Welfare Fund, Annuity Fund and Apprenticeship Journeyman Retraining, Education and Investing Fund v. MCF Associates, supra, n. 17; A.H. Emery Co. v. Marcan Products Corp., 389 F. 2d 11, 28 (1968).

45. Lincoln Nat. Ins. Co. v. Chitkin, supra, n. 14, such as "in connection with: [Makoul v. The Prudential Ins. Co. of America, supra, n. 13; Young v. Verizon Bell Atlantic Cash Balance Plan, supra, n. 13.; Long v. Kemper Life Insurance Co., 553 N.E. 2d 429,441 (Ill. Ct. of App. 1990); Connecticut General Life Ins. Co. v. Grand Avenue Service Center Ltd., 2015 WL 1868587 (N.D. Ill. April 21, 2015)]; "directly related to" [Liberty Life Ins. v. Devillavilla, 2013 WL 12388626 (M.D. Fla. Sept. 10, 2013); Calloway v. Partners National Health Plans, 986 F. 2d 446,450-51 (11th Cir. 1993)] a "direct nexus" [International Union v. Allied Industrial Workers Local 589, 693 F. 2d 666,672 (7th Cir. 1982); Washington Capitals Basketball Club v. Barry, 419 F. 2d 472,478 (9th Cir. 1969)] "immediate and necessary relation" [Dairy Employee Union Local 17 v. Poel, supra, n. 6); MAG Instrument Inc. v. JS Products, Inc., 595 F. Supp. 2d 1102,1110 (C.D. Cal. 2008); Northeast Women's Center, Inc. v. McMonagle, 868 F. 2d 1342,1354 (3d Cir. 1989); Specialty Minerals, Inc. v. Pluess Stauffer, 395 F. Supp. 2d 109 (S.D.N.Y. 2005); Keystone Driller Co. v. General Excavator Co., 290 U.S. 240,245 (1933);Trustees of the New York City District Council of Carpenters Pension Fund, Welfare Fund, Annuity Fund and Apprenticeship Journeyman Retraining Educational and Industry Fund v. MC, supra, n. 17; Performance Unlimited, Inc. v. Questar Publishing, Inc., 52 F. 3d 1373,1383 (6th Cir. 1995); Sherfel v. Gassman, supra, n. 31; "immediately relates" [Highmark, Inc. v. UPMC Health Plan, Inc, 276 F. 3d 160,174 (3d Cir. 2001); Romero v. Allstate Ins. Co., 2015 WL 7014576 (E.D. Pa. 2015)]; involves [Ciba-Geigy Corp. v. Bolar Pharmaceutical Co., supra, n. 27 "relates to" [Medical Society of the State of New York v. United Health Grp. Inc., 332 F.R.D. 138,150, 104 Fed. R. Serv. 1161 (S.D.N.Y. 2019); Gidatex SrL v. Campaniello Imports, Ltd., 82 F. Supp. 2d 126,131 (S.D.N.Y. 1998); Board of Trustees of the Automotive Industries Welfare Fund v. Growth Oldsmobile Chevrolet, Inc., 2011 WL 1362178 (N.D. Cal. Apr. 11, 2011); Brother Records, Inc. v. Jardina, 318 F. 3d 900,909 (9th Cir. 2003); Ayers v. LINA, 869 F. Supp. 2d 1248 (D. Ore. 2012)] "relative to "[Packers Trading Co. v. Commodity Futures Trading, Comm., 972 F. 2d 144,149 (7th Cir. 1992); Perez v. Wallis, supra, n. 19]; "controversy in issue" [Spear v. Fenkell, 2016 WL5661720 (E.D. Pa. Sept. 30, 2016); Terraciano v. Comm., Dept. of Transportation, Bureau of Driver Licensing, 753 A. 2d 233,237-38 (Pa. 2000)] "relevant misconduct" [Padmanabham v. Healey, 159 F. Supp. 3d 220,225 (D. Mass. 2016); Vaqueria Tres Monjitas, Inc. v. Irizarry 587 F. 3d 464,480 (1st Cir. 2009); Kovanda v. Heitman, 2024 WL 3888762 (D. Mass. Aug. 16, 2024)] and "arising out of" [Administrative Committee of the Wal-Mart Associates Health and Welfare Plan v. Willard, supra, n. 15.]

46. Trustees of the New York City District Council of Carpenters Pension Fund, Welfare Fund, Annuity Fund and Apprenticeship Journeyman Retraining Educational and Industry Fund v. MCF Assoc., supra, n. 17 at 465; Medical Society of the State of New York v. United Health Group, Inc., supra, n. 45, quoting Specialty Minerals, Inc., v. Pluess Staufer AG, supra, n. 45.

47. Lincoln National Ins. Co. v. Chitkin, supra, n. 14. See also Mitchell Bros. Film Group v. Cinema Adult Theatres, 604 F. 2d 852,853 (5th Cir. 19179), cert den. 445 US

917 (1980) (alleged wrongdoing by plaintiff does not bar relief unless the defendant can show that he or she was personally injured by plaintiff's conduct) Cf. Drummond Co. v. Mann, 2005 WL 8157956 (N.D. Ala. Aug. 3, 2005) (fact that defendant and counterclaimant became eligible for health benefits was not a personal injury serving as the basis for an unclean hands defense.).

48. Pujals ex rel. El Roynde Los Habanos, Inc, v. Garica, 777 F. Supp. 2d 1322 (S.D. Fla, 2011); Jenkins v. Grant Thornton LP, Grant Thornton LLP Employees Retirement Plan, and Grant Thornton LLP Health and Welfare Plan, 2014 WL 12634916 (S.D. Fla. 2014); Martin v. Frail, 2012 WL 12950895 (W.D. Tex. July 31, 2012); Padmanabham v. Healey, supra, n. 45; Vaqueria v. Tres Monjitas, Inc. v. Irizarry, supra, n. 45; Kovanda v. Heitman, supra, n. 45.

49. In re McKesson HBOC ERISA Litigation, 391 F. Supp. 2d 812 (N.D. Cal. 2005).

50. Orthopedic Associates of 65 Pennsylvania Avenue, Binghamton, New York v. Robert M. Sedor, Jr., 2010 WL 11541911 (W.D.N.Y. 2010). See also Corning Glass Works v. S. New Eng. Tel. Co., 674 F. Supp. 999 (W.D.N.Y. 1997) (Estoppel is an equitable remedy requiring the party charging estoppel to have clean hands).

51. FDIC v. Musser, 2017 WL 878208 at *6 (E.D. Pa. March 6, 2017); Nomura Sec. Intl. Inc. v. Trade Sec. Inc., 280 F. Supp. 2d 184,196 (S.D.N.Y. 2003) ("Unclean hands is an equitable defense and unavailable in an action seeking money damages."); Datasphere, Inc. v. Computer Horizons, Corp., 2009 WL 2132431 at *9 (D.N.J. July 13, 2009) (affirmative defenses cannot defeat a claim at law for breach of contract); Kairy's v. Southern Pines Trucking, Inc, 2021 WL 2073797 (W.D. Pa. May 24, 2021) (same); JSC Foreign Economic and Technostroy Export v. Intl. Development of Trade Services, 386 F. Supp. 2d 461 (S.D.N.Y. 2003).

52. Jenkins v. Grant Thornton LLP, Grant Thornton LLP Employees Retirement Plan, Grant Thornton LLP Health and Welfare Benefits Plan, supra, n. 48. Tornincasa v. Liberty Life Assurance Company, 2020 WL 2556905 (E.D. Cal. May 20, 2020).

53. For conflicting decisions, compare Murphy v. Remedial Construction Services, LP. 2010 WL 11583237 (S.D. Tex. Jan.11,2010) (Striking the affirmative defense of unclean hands when the answer failed to set forth any allegations beyond bare bones legal conclusions) with Springer v. Fair Isaac Corp., 2015 WL 7188234 at *4 (E.D. Cal. Nov. 16, 2015) (Even though vague and conclusory, so long as plaintiff is put on notice of an unclean hands defense, it will not be dismissed.).

54. Chesemore v. Alliance Holdings, 52 EBC 1703 (W.D. Wisc. Sept. 22, 2011); Wagner v. Nutrasweet Co., 95 F. 3d 527,534 (7th Cir. 1996).

55. 99 F.R.D. 593 (N.D. Ill. 1983).

56. Id. at 600. See also Secretary of Labor v. Kavalec, 2020 WL 1694560, 2020 EBC 129595 (N.D. Ohio April 7, 2020). Cf. United States v. McIntire, 370 F. Supp. 1301, 1303 (D.N.J. 1974) (The FCC's unclean hands as a result of an alleged discriminatory animus insufficient to invoke the unclean hands affirmative defense).

57. United States v. Manhattan-Westchester Med, Services, PC, 2008 WL 241079 (S.D.N.Y. Jan.28, 2008); SEC v. Follick, 2002 WL 31833868 (S.D.N.Y. Dec. 18, 2002); FTC v. Consumer Health Benefits Association, 2011 WL 13295634 (E.D.N.Y. Oct. 5, 2011). See also Martin v. Nationsbank of Georgia, N.A., supra, n. 24 (courts refuse to apply the unclean hands doctrine where government is acting in its sovereign capacity); United States v. Western Processing Co., 439 F. Supp. 29,52 (N.D. Ga. 1977).

58. Donovan v. Schmoutey, 592 F. Supp. 1361,1403 (D. Nev. 1984); Castle v. Cohen, supra, n. 3.

59. Rhoda v. Rhoda, supra, n. 26; Anweiler v. American Electric Power Service Corp., 3 F. 3d 986,993 (7th Cir. 1993); Ellenburg v. Brockway, Inc., supra, n. 10; Riess v. Humana Health Plan, Inc., 1995 WL 669583 (N.D. Ill. Nov. 8, 2015).

60. Providence Health Plan v. Charriere, 666 F. Supp. 2d 1169,1182 (D. Ore. 2009); Ayers v. Life Ins. Co. of North America, supra, n. 45; Walmart Administrative Committee v. Salazar, supra, n. 10.

61. 569 U.S. 818 (2013).

62. O'Brien Shire v. U.S. Laboratories Inc. Health and Welfare Benefit Plan, 2013 WL 3321569 (N.D. Ill. July 1, 2013). See also Makoul v. The Prudential Insurance Company of America, supra, n. 13; Quest Diagnostics v. Bomani, supra, n. 30 (Unclean hands doctrine is inconsistent with U.S. Airways v. McCutchen); Administrative Committee of Wal-Mart Stores Associates Health and Welfare Plan v. Varco, 338 F. 3d 680, 691-692 (7th Cir. 2003).

63. Supra, n. 10.

64. Supra, n. 17.

65. Holt v. Winpisinger, 811 F. 2d 1532 (D.C. Cir. 1987).

66. LoGrande v. Local 851 Employer Group Pension Plan, 695 F. Supp. 92 (E.D.N.Y. 1998).

67. Admin. Comm. of Walmart Associates Health and Welfare Plan v. Willard, supra, n. 15.

68. Supra, n. 3.

69. Id. at 421-22.

70. Supra, n. 3.

71. Compare cases permitting the unclean hands defense in collection actions such as Central New York Laborers Health v. JWJ Indus., Inc. 2015 WL 1256422 (N.D.N.Y. March 5, 2015); Central New York Laborers Health by Moro v. Faks Construction Group, Inc., 2017 WL 5160119 (N.D.N.Y. April 5, 2017); King v. Unique Rigging Corp., 2005 WL 2295085 (E.D.N.Y. Sept. 20, 2005); Heffernan v. I Care Mgmt, LLC 356 F. Supp. 2d 141,154-55 (D. Conn. 2005); Trustees of Local 813 Ins. Trust v. Wilma Livery Services, Inc., 2012 WL 4327070 (E,D,N.Y. Sept. 19, 2012); Iron Workers Local 1 Pension Fund v. Standard Steel Fabricators, 2018 WL 4554493 (N.D.N.Y. Sept. 21, 2018); Iron Workers Local No. 25 Pension Fund v. Klassik Services, Inc., 913 F. Supp. 541 (E.D. Mich. 1996); Operating Engineers Local 324 Health Care Plan v. G & W Const. Co, 2011 WL 6739296 (E.D. Mich. Dec. 22, 2011) with cases holding the unclean hands defense is not available in such circumstances. Trustees of the New York City District Council of Carpenters v. M.C.F. Assocs., supra, n. 17 and Boiler Blacksmith National Pension Trust v. Elite Mechanical & Welding, LLC, 2020 WL 2843230 (W.D. Mo. June 1, 2020).

72. Williams v. Salt City Painting, 1992 WL 265944 (N.D.N.Y. Oct. 1, 1992), reconsidered on other grounds 1993 WL 513185 (Dec. 7, 1993); Laborers Pension Fund v. Litgen Concrete Cutting & Core Co., 628 F.R.D. 96,98 (N.D. Ill. 1989).

73. 2019 WL 1208230 (N.D.N.Y. March 14, 2019).

74. 907 F. 2d 310, 314 (2d Cir. 1990).