

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS

**FILED**

MAR 17 2003

JOHN M. WATERS, Clerk  
U.S. DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS

DEBRA K. KEACH and PATRICIA SAGE, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 U.S. TRUST COMPANY, et al., )  
 )  
 Defendants. )

Case No. 01-1168

**ORDER**

This matter is now before the Court on Certain Defendants' Motion to Amend Answer. For the reasons set forth below, the Motion [#363] is GRANTED IN PART and DENIED IN PART.

Defendants Regal, Norbutas, and Stuber seek to amend their Answer in this case to conform to the evidence, provide more definitive answers, and assert a number of affirmative defenses.<sup>1</sup> After considering Plaintiffs' objections, the Court's rulings are as follows: Although it really adds nothing of substance to the answer, the proposed general answer is allowed. The proposed amendments to ¶¶ 1, 12, 47, 199, 203, 244, 245, 249, and 250 are allowed. The proposed amendments to ¶¶ 119, 121, and 212 are rejected, as the amendments do not deny the essential facts asserted in those paragraphs but rather deny only the inferences that Plaintiffs have suggested can be drawn from such facts. While these Defendants' prior Answer is an admission of the essential facts in these


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<sup>1</sup> Ellen D. Foster as Executrix, Stephen Bartley, and Ashley Anne Foster are also listed on the Motion as movants. However, they are no longer party Defendants in this case.

three paragraphs, the admission does not extend to possible inferences, as what inferences reasonably flow from the facts is to be determined at trial.

Although the First, Second, and Third Affirmative Defenses are arguably untimely, and it is difficult for the Court to understand why they were not asserted earlier, the Court finds no prejudice in allowing the proposed amendments, as such defenses have previously been asserted by other Defendants. The Fourth and Sixth Affirmative Defenses are arguments rather than affirmative defenses and are therefore rejected. The Fifth Affirmative Defense is allowed based on the Court's prior ruling that a § 408(e) defense must be affirmatively pled. Finally, the Seventh Affirmative Defense is rejected, as ERISA clearly vests plan beneficiaries with standing to bring suit to address breaches of fiduciary duty; the suggestion that Plaintiffs are not ultimately entitled to any proceeds or recovery even if successful is argument that has nothing to do with their standing.

ENTERED this 17<sup>th</sup> day of March, 2003.

  
Michael M. Mihm  
United States District Judge