

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

SCANNED

HIGHMARK WEST VIRGINIA, INC.,

Plaintiff,

vs.

Civil Action No.: 18-C-271
Presiding Judge: Shawn D. Nines
Resolution Judge: Christopher C. Wilkes

MEDTEST LABORATORIES, LLC, et al.,

Defendants.

MEDTEST LABORATORIES LLC,

Counterclaim and Third-Party
Plaintiff,

vs.

HIGHMARK WEST VIRGINIA INC., et al.,

Counterclaim and Third-Party
Defendants.

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D.B. No. _____
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[Handwritten initials]

MAR 27 2020

CELESTE RIDGWAY
CLERK CIRCUIT COURT

**ORDER DENYING THIRD-PARTY DEFENDANTS' MOTION TO DISMISS MEDTEST'S
FIRST AMENDED THIRD-PARTY COMPLAINT
FOR LACK OF PERSONAL JURISDICTION**

This matter came before the Court this 27th day of March 2020, upon Third-Party Defendants'¹

Motion to Dismiss Defendant MedTest's First Amended Third-Party Complaint for Lack of Personal

¹ The Court notes this motion is brought by "many of the 64 Third-Party Defendants". See Th. Pty. Defs' Mem., p. 1. The Third-Party Defendants bringing the instant motion are: Blue Cross Blue Shield of Alabama, Anthem, Inc., Health Care Service Corporation, a Mutual Legal Reserve Company, Cambia Health Solutions, Inc., CareFirst, Inc., Premera Blue Cross, Blue Cross and Blue Shield of Arizona, Inc., US Able Mutual Insurance Company d/b/a Arkansas Blue Cross and Blue Shield, Blue Cross of California d/b/a Anthem Blue Cross, California Physicians' Service, Inc. d/b/a Blue Shield of California, Rocky Mountain Hospital and Medical Service, Inc. d/b/a Anthem Blue Cross and Blue Shield, Anthem Blue Cross and Blue Shield, Anthem Health Plans Inc. d/b/a Anthem Blue Cross and Blue Shield of Connecticut, Highmark Inc., Highmark BCBS Inc., d/b/a Highmark Blue Cross and Blue Shield Delaware, Group Hospitalization and Medical

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Jurisdiction. The parties have fully briefed the issues necessary. The Court held extensive oral argument in the matter on January 28, 2020, at which time Plaintiff's Counsel, Defendants' Counsel and Counsel for various Third-Party Defendants appeared. So, upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

FINDINGS OF FACT

1. This matter was initiated with the Complaint filed on or about October 18, 2018, alleging causes of action for fraudulent misrepresentation & inducement (Count I); breach of contract (Count II), unjust enrichment (Count III); civil conspiracy (Count IV); joint venture (Count V); negligence (Count VI); and "piercing the MedTest LLC veil" (Count VII), related to an alleged billing scheme wherein Plaintiff Highmark West Virginia (hereinafter "Plaintiff" or "Highmark WV") alleged Defendants MedTest Laboratories, LLC (hereinafter "MedTest"), Brice and/or Billy Taylor, Muhamad Amjad, Ph. D., Michael Chen, Ph. D., and James Taylor, carried out a billing scheme by making

Services, Inc. d/b/a CareFirst BlueCross BlueShield, Blue Cross and Blue Shield of Florida, Inc., Blue Cross and Blue Shield of Georgia, Inc., Blue Cross of Idaho Health Service, Inc., Regence BlueShield of Idaho, Inc., Blue Cross and Blue Shield of Illinois, Inc., Anthem Insurance Companies, Inc. d/b/a Anthem Blue Cross and Blue Shield of Indiana, Wellmark, Inc. d/b/a Wellmark Blue Cross and Blue Shield of Iowa, Blue Cross and Blue Shield of Kansas, Inc., Anthem Health Plans of Kentucky, Inc. d/b/a Anthem Blue Cross and Blue Shield of Kentucky, Louisiana Health Service & Indemnity Company d/b/a Blue Cross and Blue Shield of Louisiana "incorrectly named as" Louisiana Health Service and Indemnity Company, PAC d/b/a Blue Cross and Blue Shield of Louisiana, Anthem Health Plans of Maine, Inc. d/b/a Anthem Blue Cross and Blue Shield of Maine, CareFirst of Maryland, Inc. d/b/a CareFirst BlueCross BlueShield, Blue Cross and Blue Shield of Massachusetts, Inc., Blue Cross and Blue Shield of Michigan, BCBSM, Inc. d/b/a Blue Cross and Blue Shield of Minnesota, Blue Cross & Blue Shield of Mississippi, A Mutual Insurance Company, HMO Missouri, Inc. d/b/a Anthem Blue Cross and Blue Shield of Missouri, Blue Cross and Blue Shield of Kansas City, Caring for Montanans, Inc. d/b/a Blue Cross and Blue Shield of Montana, Inc., Blue Cross and Blue Shield of Nebraska, Inc., Anthem Blue Cross and Blue Shield of Nevada, Anthem Health Plans of New Hampshire, Inc., d/b/a Anthem Blue Cross and Blue Shield of New Hampshire, Horizon Healthcare Services, Inc., d/b/a Horizon Blue Cross and Blue Shield of New Jersey, Blue Cross and Blue Shield of New Mexico Insurance Company, HealthNow New York Inc.; Blue Shield of Northeastern New York, Inc.; Blue Cross and Blue Shield of Western New York, Inc.; Empire HealthChoice Assurance, Inc. d/b/a Empire BlueCross BlueShield, Excellus Health Plan, Inc. d/b/a Excellus BlueCross BlueShield, Blue Cross and Blue Shield of North Carolina, Noridian Mutual Insurance Company d/b/a Blue Cross and Blue Shield of North Dakota, Community Insurance Company d/b/a Anthem Blue Cross and Blue Shield of Ohio, Blue Cross and Blue Shield of Oklahoma, Regence BlueCross BlueShield or Oregon, Capital Blue Cross, Independence Hospital Indemnity Plan, Inc., Triple-S Salud, Inc., Blue Cross & Blue Shield of Rhode Island, BlueCross BlueShield of South Carolina, Inc., Wellmark of South Dakota, Inc. d/b/a Wellmark, Blue Cross and Blue Shield of South Dakota, BlueCross BlueShield of Tennessee, Inc., Blue Cross and Blue Shield of Texas, Regence BlueCross BlueShield of Utah, Blue Cross and Blue Shield of Vermont, Anthem Health Plans of Virginia, Inc. d/b/a Anthem Blue Cross and Blue Shield of Virginia, Inc., Regence BlueShield, Blue Cross Blue Shield of Wisconsin d/b/a Anthem Blue Cross and Blue Shield of Wisconsin, and Blue Cross & Blue Shield of Wyoming. *Id.*

fraudulent claims for insurance benefits to Plaintiff². *See* Compl., ¶¶1, 37-80. On September 13, 2019, Plaintiff filed an Amended Complaint adding Cenegen, LLC as a Defendant, and this Amended Complaint asserts the same causes of action as the original Complaint in the matter³. *See* Am. Compl., ¶¶39-82; *see also* Th. Pty. Def's Mem., p. 2.

2. On or about April 8, 2018, Defendants filed their Answer on Behalf of MedTest Laboratories, LLC, Billy Taylor, Brice Taylor, James Taylor, Vitas Laboratories and Michael Chen, Ph.D., along with Counterclaims and a Third-Party Complaint, asserting causes of action for breach of contract against Highmark WV (Count I); negligence against Highmark WV (Count II); fraudulent misrepresentation and inducement against all Defendants (Count III); civil conspiracy against all Defendants (Count IV); joint venture against all Defendants (Count V); and unjust enrichment against all Defendants (Count VI). *See* Counterclaims and Th. Pty. Compl., ¶¶98- 129. On September 13, 2019, Defendants filed their First Amended Counterclaims and Third-Party Complaint asserting the same claims. *See* First Am. Counterclaims and Th. Pty. Compl., ¶¶108- 139; *see also* Th. Pty. Def's Mem., p. 2.

3. Relevant to the instant motion are the causes of action for fraudulent misrepresentation and inducement against all Defendants (Count III); civil conspiracy against all Defendants (Count IV); joint venture against all Defendants (Count V); and unjust enrichment against all Defendants (Count VI) of the First Amended Counterclaim and Third-Party Complaint filed September 13, 2019, as these are the four claims alleged by MedTest against the Third-Party Defendants in the First Amended Counterclaims and Third-Party Complaint. *See* Th. Pty. Defs' Mem., p. 3.

² The Court notes Defendants filed a motion to dismiss the entire Complaint, and this motion was denied by Judge Waters by Order Denying Defendants' Motion to Dismiss filed March 21, 2019. *See* Ord., 3/21/19.

³ The Court notes that all the aforementioned Defendants may hereinafter be referred to as "Defendants" or "Third-Party Plaintiffs".

4. On or about June 18, 2019, this civil action was referred to the Business Court Division. On July 22, 2019, the matter was referred to the Business Court Division via Administrative Order of the Supreme Court of Appeals of West Virginia. By Order Assigning Presiding and Resolution Judge to Case entered on or about July 29, 2019, the matter was assigned to the undersigned as Presiding Judge.

5. On June 26, 2019, Third-Party Defendants filed a Rule 12(b)(2) motion. Pursuant to the referral to the Business Court Division, the parties jointly proposed a briefing schedule relating to the third-party claims, which, among other things, provided a deadline for MedTest to file an amended third-party complaint. MedTest filed the First Amended Third-Party Complaint on September 19, 2019⁴. *See Th. Pty. Defs' Mem.*, p. 2.

6. On or about October 15, 2019, Third-Party Defendants filed the instant Third-Party Defendants' Motion to Dismiss Defendant MedTest's First Amended Third-Party Complaint for Lack of Personal Jurisdiction, seeking dismissal of the First Amended Counterclaim and Third-Party Complaint filed September 13, 2019, for lack of personal jurisdiction. *See Th. Pty. Defs' Mot.*, p. 1.

7. On or about October 15, 2019, Blue Cross and Blue Shield of Arizona filed Blue Cross Blue Shield of Arizona's Motion to Dismiss First Amended Third-Party Complaint for Lack of Personal Jurisdiction, renewing its motion to dismiss and filing a supported affidavit as Exhibit 1. The Court will incorporate this into the instant motion to dismiss.

8. On or about November 1, 2019, Defendant/Counterclaim and Third-Party Plaintiff MedTest filed Third-Party Plaintiff's Memorandum of Law in Opposition to Third-Party Defendants' Motions to Dismiss MedTest's Amended Third-Party Complaint for Lack of Personal Jurisdiction and

⁴ *See, supra*, ¶2.

Improper Venue⁵, arguing the Third-Party Defendant members of the Blue Cross Blue Shield Association (“the Blues”) are subject to personal jurisdiction in a provider’s state when they use their national network to pay out-of-state health care providers to perform services for their subscribers. *See* Def’s Resp., p. 1.

9. On or about November 15, 2019, Third-Party Defendants filed their Joint Reply Brief in Support of Motion to Dismiss MedTest’s Amended Third-Party Complaint for Lack of Personal Jurisdiction, reiterating its position that they are not subject to personal jurisdiction in West Virginia, and arguing that “merely posting material on a website does not subject a party to personal jurisdiction in West Virginia”. *See* Reply, p. 3. Further, Third-Party Defendants aver the Response failed to address the fact that MedTest has made no allegation that any of the Third-Party Defendants’ plan members actually received services in West Virginia. *Id.*

10. On January 28, 2020, the parties, by counsel⁶, appeared before the undersigned for a hearing on the instant Third-Party Defendants’ Motion to Dismiss Defendant MedTest’s Amended Third-Party Complaint for Lack of Personal Jurisdiction and related filings.

11. The Court now finds the instant Motion is ripe for adjudication.

STANDARD OF LAW

12. This matter comes before the Court upon a partial motion to dismiss for lack of personal jurisdiction. Motions to dismiss for lack of personal jurisdiction are governed by Rule 12(b)(2) of the West Virginia Rules of Civil Procedure.

⁵ The Court notes MedTest averred the following: It “submits this memorandum of law in opposition to various Third-Party Defendants’ motions to dismiss for lack of personal jurisdiction and improper venue. These Third-Party Defendants filed three separate motions to dismiss, which generally rely on similar legal analysis and factual arguments. Since the motions raise similar legal and factual issues, MedTest submits this single opposition.” *See* Def’s Resp., p. 1.

⁶ The Court notes Defendant Muhammad Amjad, Ph. D. attended the hearing in person, *pro se*.

13. “Every defense, in law or fact, to a claim for relief ... shall be asserted in the responsive pleading ... except that the following defenses may at the option of the pleader be made by motion ... (2) lack of jurisdiction over the person” W.Va. R. Civ. P. 12(b).

14. “When a defendant files a motion to dismiss for lack of personal jurisdiction under W. Va. R. Civ. P. 12(b)(2), the circuit court may rule on the motion upon the pleadings, affidavits and other documentary evidence or the court may permit discovery to aid in its decision. ... If [] the court conducts a pretrial evidentiary hearing on the motion ... the party asserting jurisdiction must prove jurisdiction by a preponderance of the evidence.” Syl. Pt. 6, *State ex rel. Ford Motor Co. v. McGraw*, 237 W.Va. 573, 788 S.E.2d 319 (2016).

15. “In determining whether a party has made a prima facie showing of personal jurisdiction, the court must view the allegations in the light most favorable to such party, drawing all inferences in favor of jurisdiction.” *Bowers v. Wurzburg*, 202 W. Va. 43, 501 S.E.2d 479 (1998)(citation and quotation marks omitted).

CONCLUSIONS OF LAW

16. Third-Party Defendants filed the instant Third-Party Defendants’ Motion to Dismiss Defendant MedTest’s Amended Third-Party Complaint for Lack of Personal Jurisdiction, seeking dismissal of the First Amended Counterclaim and Third-Party Complaint filed September 13, 2019, arguing MedTest has not alleged facts sufficient to establish any Third-Party Defendant has had the requisite contacts with West Virginia to permit the Court to exercise personal jurisdiction over them under either the West Virginia long-arm statutes or federal constitutional due process. *See* Th. Pty. Defs’ Mem., p. 2.

17. After having reviewed and considered the Amended Counterclaim and Third-Party Complaint filed September 13, 2019, the Motion to Dismiss, memoranda of law and exhibits of the

parties, as well as the oral arguments of counsel, this Court hereby **DENIES** the instant Third-Party Defendants' Motion to Dismiss Defendant MedTest's Amended Third-Party Complaint for Lack of Personal Jurisdiction. The issues will be taken up in turn.

18. A court must use a two-step approach when analyzing whether personal jurisdiction exists over a foreign corporation or other nonresident. The first step involves determining whether the defendant's actions satisfy our personal jurisdiction statutes set forth in W. Va. Code, [31D-15-1501]⁷ and W. Va. Code, 56-3-33 [2012]. The second step involves determining whether the defendant's contacts with the forum state satisfy federal due process." Syl. Pt. 3, *State ex rel. Ford Motor Co. v. McGraw*, 237 W.Va. 573, 788 S.E.2d 319 (2016).

19. The first prong of the personal jurisdiction inquiry requires the Third-Party Plaintiff to demonstrate that the Blues are doing business in West Virginia for purposes of the State's long arm statutes. The Third-Party Plaintiff may demonstrate that the Blues are doing business in West Virginia if it can prove that the Blues engaged in one or more of the following acts within West Virginia:

- (1) Transacting any business in this state;
- (2) Contracting to supply services or things in this state;
- (3) Causing tortious injury by an act or omission in this state;
- (4) Causing tortious injury in this state by an act or omission outside this state if he or she regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;
- (5) Causing injury in this state to any person by breach of warranty expressly or impliedly made in the sale of goods outside this state when he or she might reasonably have expected such person to use, consume or be affected by the goods in this state: Provided, That he or she also regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

⁷ Syllabus Point 3 of *McGraw* references W.Va. Code, 31-1-15, but this statute was repealed in 2002. The current statutory reference is W.Va. Code 31D-15-1501.

- (6) Having an interest in, using or possessing real property in this state; or
- (7) Contracting to insure any person, property or risk located within this state at the time of contracting.

W.Va. Code § 56-3-33.

20. Alternatively, the Third-Party Plaintiff may demonstrate that the Blues are doing business in West Virginia if it: (1) “makes a contract to be performed, in whole or in part, by any party thereto in this state”; (2) “commits a tort, in whole or in part, in this state”; or (3) “manufactures, sells, offers for sale or supplies any product in a defective condition and that product causes injury to any person or property within this state.” W.Va. Code § 31D-15-1501.

21. Plaintiff Highmark WV is a West Virginia nonprofit corporation with its principal office address in Wood County, West Virginia. *See* Am. Compl, ¶3.

22. Defendant MedTest is a West Virginia Limited Liability Company with its principal office address in Putnam County, West Virginia. *Id.* at ¶4.

23. Third-Party Defendant Blues are the licensed Blue Cross Blue Shield plans with corporation/business headquarters located in states throughout the United States. *See* Th. Pty. Defs’ Mem., p. 2; *see also* First Am. Counterclaims and Th. Pty. Compl., ¶¶10-72.

24. The First Amended Counterclaim and Third-Party Complaint in this civil action involves claims of conspiracy and other claims regarding an alleged breach of a national network agreement. As alleged, MedTest, a clinical laboratory, contracted with Highmark WV to participate in a national network involving compensation for laboratory testing services by providers of health insurance plans insured or administered by Highmark WV’s fellow Blues through the national network(s), including the “BlueCard” program. *See* First Am. Counterclaims and Th. Pty. Compl., ¶¶2-3.

25. It was alleged in the Amended Complaint that the BlueCard Program is “a national program that enables the members of one Blue Plan to obtain health care service benefits while traveling or living in another Blue Plan’s service area.” *See* Am. Compl, ¶18; *see also* Def’s Resp., p. 3.

26. It was also alleged in the Amended Complaint that under this and other national programs, when a health care provider in West Virginia provides a service to a subscriber of a Blue Plan outside West Virginia, Highmark WV is responsible for processing the claim. *See* Am. Compl, ¶20; *see also* Def’s Resp., p. 3.

27. A provider such as MedTest provides services for their subscribers, then Highmark WV processes the resulting claims and pays MedTest, and the Third-Party Defendant Blues reimburse Highmark WV. *See* Def’s Resp., p. 4. The Court notes that at the hearing, no Blue stated that it did not have a contract with Highmark WV, a West Virginia non-profit corporation, and/or MedTest, a West Virginia Limited Liability Company. Further, no Blue proffered that they never reimbursed a claim from a West Virginia provider. The Court finds further discovery is needed to flesh out these claims.

28. MedTest argues that the BlueCard Program and other national programs are governed by contracts signed by the Blues, which require each of the Blues to participate. *See* Def’s Resp., p. 3.

29. While MedTest has laboratories for testing in West Virginia, Arkansas, and North Carolina, the Court finds that the payments were alleged to be made by contract in and to West Virginia through the contracts with a West Virginia company⁸. Highmark WV, a West Virginia nonprofit corporation, processes the claims and pays MedTest, a West Virginia Limited Liability Company in West Virginia, and the Third-Party Defendants reimburse Highmark WV in West Virginia. *See* Def’s Resp., p. 4.

⁸ To illustrate, the Court notes that if MedTest sends a sample for testing to its Arkansas laboratory instead of its West Virginia laboratory, and one of the Blues wrongly refused to pay for this service, MedTest would still lose money in West Virginia. Thus, the location of the actual testing is immaterial to MedTest’s claims.

30. It has been pled that each of the Blues entered into a series of contracts that require performance in West Virginia by Highmark WV and MedTest. *See* Def's Resp., p. 5.

31. Accordingly, the Court finds that in order to participate in the national programs as alleged in the pleadings, the Blues have "made a contract to be performed, in whole in part, by any party thereto in this state". W. Va. Code §§31D-15-1501(d)(1), 31E-14-1401(d)(1).

32. Now that the Court has found that Third-Party Plaintiffs have established personal jurisdiction under West Virginia's long arm statutes, the Court will next examine whether Third-Party Plaintiffs have demonstrated that the Blues have minimum contacts with West Virginia for the purposes of federal due process.

33. The West Virginia Supreme Court of Appeals explained in *McGraw*:

The specific jurisdiction analysis for determining whether a forum's exercise of jurisdiction over a nonresident defendant meets due process standards is multi-pronged. The first prong requires a determination that the nonresident defendant has minimum contacts with the forum. Establishing minimum contacts involves an examination of whether the defendant purposefully availed itself of the privilege of conducting activities within the forum. Two general methods for assessing minimum contacts for purposes of specific personal jurisdiction are stream of commerce and stream of commerce plus. To meet the second prong, it must be determined that the plaintiff's claims arise out of or relate to the defendant's contacts with the forum. Under the third prong, it must be constitutionally reasonable to assert the jurisdiction so as to comport with fair play and justice. The reasonableness factors were identified in *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987), and include considering "the burden on the defendant," "the interests of the forum State," "the plaintiff's interest in obtaining relief," "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," and "the shared interest of the several States in furthering fundamental substantive social policies." *Id.* at 113, 107 S.Ct. at 1033, 94 L.Ed.2d 92 (internal quotations and citation omitted).

State ex rel. Ford Motor Co. v. McGraw, 237 W. Va. 573, 589, 788 S.E.2d 319, 335 (2016).

34. “The purposeful availment requirement of specific personal jurisdiction ensures that a defendant will not be haled into a jurisdiction as a result of isolated, fortuitous, or random acts.” Syl. Pt. 9, *State ex rel. Ford Motor Co. v. McGraw*, 237 W.Va. 573, 788 S.E.2d 319 (2016).

35. The Blues argue they are not subject to specific jurisdiction in West Virginia because there are no facts that establish they purposefully availed themselves of conducting business and/or activities in West Virginia. The Court considers the case law provided by Third-Party Defendants regarding situations where a defendant has simply posted information on an Internet web site accessible to users in foreign jurisdictions. *See* Th. Pty. Defs’ Mem., p. 7-8.

36. The Court, however, considers that posting the information on the Blues’ websites is simply an online version of the paper directory of providers that insureds can use to determine if a provider will be covered. The Court differentiates this from traditional passive website cases. Here, it is claimed that the Third-Party Defendants held out and advertised to insureds/subscribers that they could send samples to MedTest, a West Virginia Limited Liability Company, and that they would pay for MedTests’s services via both online and paper versions of listings of covered providers. The Court notes the Blues even admit in their Memorandum that these are “online provider directories”. *See* Th. Pty. Defs’ Mem., p. 9.

37. This is not “random” or fortuitous”. *See* Syl. Pt. 9, *State ex rel. Ford Motor Co. v. McGraw*, 237 W.Va. 573, 788 S.E.2d 319 (2016). Instead, this was built into the design of Third-Party Defendants’ own health plans. It was Third-Party Defendants’ deliberate choice to do business with a company in another state.

38. Further, the Court considers that at the hearing, upon questioning by the undersigned, counsel for MedTest stated that there would be a benefit to these listings of participating network providers, as they make the business more competitive, that one of the ways they compete is

demonstrating how big one's network is, demonstrating there are many options for getting one's medical testing done versus just a few, and that network size is promoted heavily. In support of this, counsel averred at the hearing that there are several subparagraphs of the First Amended Counterclaim and Third-Party Complaint about how they promote the BlueCard program for people to get treatment all across the country.

39. If as claimed, Third-Party Defendants advertised to their subscribers that they could use MedTest's services and be covered, and failed to pay for those services, then the Third-Party Defendants should have been aware that they could cause injury in West Virginia to the West Virginia corporation and should have reasonably anticipated being haled into court in West Virginia.

40. The Court considers the Blues' argument in their Memorandum which is that any connection with West Virginia is not established by the Blues themselves, but only because one of their members, or their health care provider, chose to seek medical care in West Virginia or had their laboratory samples sent to MedTest, the West Virginia company at issue here. The Court, however, concludes that these instances of contact with West Virginia could have occurred when a member or their health care provider relied on the Blues' representations in online directories and lists of covered providers that indicated these instances of contact with West Virginia would be covered health services. *See Th. Pty. Defs' Mem.*, p. 11. Therefore, the Third-Party Defendants themselves would have created the connection with West Virginia, by putting MedTest on their online directory and/or lists.

41. Further, the undersigned has determined that the Third-Party Plaintiff's claims arise out of or relate to these contacts with West Virginia. *See McGraw*, 237 W. Va. at 589, 788 S.E.2d at 335.

42. As described above, the system under which MedTest provided services to the subscribers of the Blues involves a series of contracts that bind the Blues, Highmark WV, and MedTest. *See McGraw*, 237 W. Va. at 589, 788 S.E.2d at 335.

43. Finally, the undersigned considers that it is constitutionally reasonable to assert the jurisdiction so as to comport with fair play and justice. *See McGraw*, 237 W. Va. at 589, 788 S.E.2d at 335. Considering the five factors outlined in *McGraw* outlined above, the Court finds jurisdiction is reasonable.

44. First, the Court has not been convinced that defending this suit in West Virginia will be burdensome, and specifically not so unreasonable that it reaches constitutional magnitude. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 484, 105 S. Ct. 2174, 2188, 85 L. Ed. 2d 528 (1985). The Court notes many of the Blues are sharing counsel in this matter. It is not overly burdensome to defend against claims in another state when one chooses to do business with companies headquartered in that state while building a national network.

45. Second, in considering the interests of the forum state, the Court considers West Virginia's interests. West Virginia has an interest in allowing its companies, such as Highmark WV, a West Virginia nonprofit corporation, and MedTest, a West Virginia Limited Liability Company, to litigate its claims against out-of-state defendants here. As discussed above, the Blues could have reasonably anticipated being haled into Court here, and West Virginia residents and companies have an interest in having an avenue to hold out-of-state companies who choose to do business with them, as West Virginia corporate entities, accountable for alleged claims that proximately arise from such in-state activities.

46. Third, the Court considers the plaintiff's interest in obtaining relief. If the Court were not to exercise jurisdiction, then MedTest (Third-Party Plaintiff) would have to file dozens of suits all across the country. The Court finds the Third-Party Plaintiff has an interest in filing one, streamlined lawsuit where it can be resolved.

47. Fourth, the Court considers the judicial system's interest in obtaining the most efficient resolution of controversies. Again, if the Court were not to exercise jurisdiction, and MedTest (Third-Party Plaintiff) would have to file dozens of suits all across the country, this would be much less efficient. Moreover, it would carry a risk of conflicting results.

48. Finally, fifth, the Court considers the shared interest of the several states in furthering fundamental substantive social policies. If, indeed, the Blues have harmed MedTest, a resident of West Virginia, as alleged, the Court concludes it furthers no substantive policy to make recovery extraordinarily difficult by forcing that West Virginia corporate resident to litigate the same case dozens of times in dozens of jurisdictions.

49. Additionally, the Court considers that MedTest has validly pled a case for civil conspiracy. The Court has found that MedTest has met its pleading sufficiency burden, and that this cause of action will not be dismissed at this stage of the litigation. MedTest pled that the Blues participated in this conspiracy, therefore, because MedTest has pled a claim for conspiracy, it has undoubtedly established jurisdiction here.

50. In conclusion, the Court finds Third-Party Plaintiff has met its burden to establish jurisdiction; therefore, the instant Motion to Dismiss Defendant MedTest's First Amended Third-Party Complaint for Lack of Personal Jurisdiction must be denied.

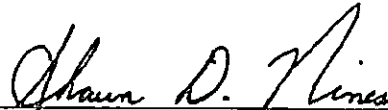
CONCLUSION

WHEREFORE, it is hereby **ORDERED** and **ADJUDGED** that Third-Party Defendants' Motion to Dismiss Defendant MedTest's First Amended Third-Party Complaint for Lack of Personal Jurisdiction is hereby **DENIED**. It is hereby further **ORDERED** and **ADJUDGED** that Blue Cross and Blue Shield of Arizona's Motion to Dismiss First Amended Third-Party Complaint for Lack of Personal Jurisdiction is hereby **DENIED**.

The Court notes the objections of the parties to any adverse ruling herein.

The Clerk is directed to enter this Order as of the date first hereinabove appearing, and send attested copies to all counsel of record, as well as to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

ENTERED this 27th day of March 2020.

A handwritten signature in cursive script, reading "Shawn D. Nines", is written over a horizontal line.

Shawn D. Nines
Business Court Division