

**IN THE CIRCUIT COURT OF MARION COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**

**AMERICAN BITUMINOUS
POWER PARTNERS, L.P.,**

Plaintiff,

vs.

**Civil Action No.: 20-C-136
Presiding: Judge Akers**

**EMPLOYERS' INNOVATIVE
NETWORK, LLC et al.,**

Defendants.

**ORDER GRANTING MOTION TO DISMISS FOR LACK OF PERSONAL
JURISDICTION**

This matter came before the Court on a previous day, upon the Motion to Dismiss for Lack of Personal Jurisdiction by Defendants Vensure Topco, LLC and Employers' Innovative Network Acquisition, LLC. The Plaintiff, American Bituminous Power Partners, Inc. (hereinafter "Plaintiff" or "AMBIT"), by counsel, Roberta F. Green, Esq., and Defendants, Vensure TopCo, LLC and Employers' Innovative Network Acquisition, LLC, (hereinafter "Defendants"), by counsel, Russell D. Jessee, Esq., have fully briefed the issues necessary. Oral argument was heard May 23, 2024. So, upon the full consideration of the issues, the record, the written and oral arguments of the parties, and the pertinent legal authorities, the Court rules as follows.

FINDINGS OF FACT

1. AMBIT filed an Amended Complaint in this matter, adding, among others, Defendants Vensure TopCo, LLC (hereinafter "TopCo") and Employers'

Innovative Network Acquisition, LLC (hereinafter “EINA”). *See* Defs’ Mem., p. 1.

2. AMBIT’s allegations in the Amended Complaint center around its contract with Defendant Employers’ Innovative Network, LLC (hereinafter “EIN”). Specifically, this case surrounds the contractual obligations in a Customer Services Agreement contract between EIN and AMBIT, wherein Plaintiff, engaged in the operation of an electric generation plant, contracted with EIN for certain professional employer organization (PEO) and human resources services, and AMBIT and EIN co-employed the plant’s employees. *See* Compl., ¶¶6-7; *see also* Mot. to Refer, p. 1. AMBIT’s sole specific allegation about EINA is “Defendant Employers’ Innovative Network Acquisition, LLC (hereinafter ‘EINA’) is a Delaware limited liability company, that ‘purchased EIN and its various related entities in September 2019, [such that] EIN is now wholly owned by EINA.’” Am. Compl. ¶ 3. And AMBIT’s sole specific allegation about TopCo is “Defendant Vensure TopCo, LLC (‘TopCo’) is also a Delaware limited liability company, that, per EIN, owns EINA.” *Id.* ¶ 4.
3. Both EINA and TopCo are organized as Delaware limited liability companies, but they are holding companies, not operating companies that is, neither has any operations or employees. *See* Defs’ Mem., p. 1.
4. At the time EIN was purchased, EINA was single-member, single-purpose limited liability company, formed for the sole purpose of facilitating the purchase of EIN and related entities. *See* Defs’ Mem., p. 3. TopCo was also a limited liability company that was the sole member of Vensure HoldCo, LLC, and Vensure HoldCo,

LLC was the owner of Vensure Employer Services, Inc. *Id.* In April 2021, Vensure TopCo, LLC merged into a separate limited partnership during restructuring and no longer exists as a separate legal entity. *Id.*

5. On or about December 8, 2021, Defendants filed the instant Motion to Dismiss for Lack of Personal Jurisdiction by Defendants Vensure TopCo, LLC and Employers' Innovative Network Acquisition, LLC, seeking to dismiss the Complaint with prejudice for lack of personal jurisdiction. *See* Def's Mem., p. 5.
6. On or about January 5, 2022, Plaintiff filed its Response to the Motion to Dismiss, arguing the Court should grant it leave to conduct jurisdictional discovery so that it may demonstrate sufficient minimum contacts to comport with traditional notions of fairness, demonstrate tortious injury within this state either directly or through an agent, and "further develop evidence of the alter ego and other relationships between and among the defendants, which evidence in part will form the basis of jurisdiction over TopCo and EINA". *See* Pl's Resp., p. 2.
7. On May 10, 2024, Defendants filed its Reply in Support of Motion to Dismiss for Lack of Personal Jurisdiction by Defendants Vensure TopCo, LLC, and Employers' Innovative Network Acquisition, LLC, arguing that AMBIT conducted the requested jurisdictional discovery by conducting four apex depositions between January 17, 2022 and April 22, 2022, and it confirmed TopCo and EINA lack any connection to this case or to West Virginia that would support this Court's exercise of jurisdiction over them. *See* Reply, p. 2, 7.
8. On May 21, 2024, AMBIT filed AMBIT's Reply in Support of Motion to Conduct Jurisdictional Discovery (contained within its January 5, 2022

Response), and reiterating and renewing its Opposition to the instant motion and, in the alternative, seeking leave to conduct more jurisdictional discovery “in order to demonstrate *yet again* exactly who owns whom and who made the decisions relative to the takings and conversions, and to determine, finally, which of the five corporations (or even another entity) holds AMBIT’s money”. See Reply, p. 3 (emphasis in original).

9. A hearing was held May 23, 2024.

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

STANDARD OF LAW

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.

“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).

“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).

“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

In this motion, Defendants TopCo and EINA argue this Court lacks personal jurisdiction over them under West Virginia’s long-arm statutes. *See* Def’s Mem., p. 5.

West Virginia courts follow

[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 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) (internal citations omitted).

Importantly, “[t]he standard of jurisdictional due process is that a foreign corporation must have such minimum contacts with the state of the forum that the maintenance of an action in the forum does not offend traditional notions of fair play and substantial justice.” Syl. Pt. 6, in part, *State ex rel. Bell Atlantic-West Virginia, Inc. v. Ranson*, 201 W. Va. 402, 497 S.E.2d 755 (1997).” Syl. Pt. 3, *State ex rel. Third-Party Def. Health Plans v. Nines*, 244 W. Va. 184, 852 S.E.2d 251 (2020).

West Virginia’s primary long arm statute confers *in personam* jurisdiction over a nonresident defendant so long as each “cause of action aris[es] from or grow[s] out of” one of seven acts.” W. Va. Code § 56-3-33(a). All seven subsections require an act, agreement to act, or property ownership within West Virginia except one: causing tortious injury within the state if the defendant “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.” W. Va. Code § 56-3-33(a)(4). As to corporations incorporated under the laws of another state, a plaintiff may invoke West Virginia’s second long-arm statute, which provides for jurisdiction over contracts to be performed in whole or part in the state, commission of a tort in the state, or sale of a defendant’s products. W. Va. Code § 31D-15-1501(d).

The Court considers AMBIT has not alleged that EINA or TopCo engaged in any of the enumerated acts set forth in either of West Virginia’s long-arm statutes. AMBIT’s Amended Complaint does not contain any specific allegations of acts or omissions by EINA or TopCo. As an initial matter, this Court considers that both EINA and TopCo are organized as Delaware limited liability companies, but they are holding companies, not operating companies—that is, neither has any operations or employees. AMBIT’s only specific allegations with respect to EINA is that it is a Delaware Limited Liability Company that owns EIN. See Am. Compl. ¶ 3. Similarly, the only specific allegation against TopCo, is that TopCo is a Delaware Limited Liability Company that owns EINA. See *Id.* ¶ 4. The Court notes that neither EINA nor TopCo has operations or employees that could carry out any acts listed in W. Va. § 56-3-33(a) or W. Va. Code § 31-15-1501(d). The Court finds that neither EINA nor TopCo is subject to this Court’s jurisdiction pursuant to any provision contained in W. Va. Code § 55-6-33(a) or § 31D-15-1501(d).

The contract agreement at the heart of this civil action is between AMBIT and EIN. This contract involves the fact that EIN and AMBIT co-employed AMBIT’s plant employees, and the contract also involves EIN’s contractual obligations to provide certain professional employer organization (PEO) and human resources services for AMBIT. See Compl., ¶¶6-7; see also Mot. to Refer, p. 1. AMBIT never contracted with either EINA or TopCo, never had any other business relationship with either of them, never communicated with either of them, and never paid money to either of them. Their bare ownership interests do not constitute any of the

enumerated acts in either long-arm statute. AMBIT thus cannot show that EINA and TopCo are subject to this Court's personal jurisdiction under the long-arm statutes.

Further, in performing a due process analysis, "[p]ersonal jurisdiction may be either general or specific." *State ex rel. Third-Party Def. Health Plans*, 244 W. Va. at —, 852 S.E.2d at 260 (footnote omitted). General jurisdiction gives jurisdiction only when a company's "affiliations with the State are so substantial, continuous, and systematic as to render the nonresident corporate defendant essentially at home in the State," Syl. Pt. 5, *State ex rel. Ford Motor Co.*, 237 W. Va. 573, 788 S.E.2d 319. The Court finds general jurisdiction does not apply. Rather, the Court may exercise personal jurisdiction over EINA and TopCo only if it has specific jurisdiction over them.

"The [West Virginia Supreme] Court in *Ford* distilled the [specific jurisdiction] analysis into three syllabus points:

A court may assert specific personal jurisdiction over a nonresident defendant to hear claims against the defendant arising out of or relating to the defendant's contacts or activities in the state by which the defendant purposefully avails itself of conducting activities in the state so long as the exercise of jurisdiction is constitutionally fair and reasonable.

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.

The specific personal jurisdiction fairness and reasonableness inquiry may, in appropriate cases, include, but is not limited to, considering the burden on the defendant, the interests of the state, the interest of the plaintiff in obtaining relief, the interstate judicial system's interest in obtaining efficient resolution of controversies, and the shared interests of states in furthering fundamental substantive social policies. The analysis is case specific, and all factors need not be present in all cases.

Id., Syl. Pts. 8, 9, & 10, 237 W. Va. 573, 788 S.E.2d 319.” *State ex rel. Third-Party Defendant Health Plans v. Nines*, 244 W. Va. 184, 194, 852 S.E.2d 251, 261 (2020).

A state may authorize its courts to exercise personal jurisdiction over an out-of-state defendant if the defendant has “certain minimum contacts with [the state] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). “Specific or case-linked jurisdiction depends on an affiliation[n] between the forum and the underlying controversy (*i.e.*, an activity or occurrence that takes place in the forum State and is therefore subject to the State’s regulation).” *Walden v. Fiore*, 571 U.S. 277, 283 n. 6 (2014) (internal quotation marks and citations omitted). The minimum contacts analysis looks to a defendant’s contacts with the forum state itself, not contacts with persons who reside there. *See id.* at 285. The plaintiff cannot be “the only link between the defendant and the forum.” *Id.* at 285.

The West Virginia Supreme Court of Appeals has set forth three main inquiries to consider when examining specific jurisdiction: 1) purposeful availment, that is, whether a defendant has purposefully availed itself of the privilege of conducting activities within the forum; 2) whether the controversy arises out of or relates to the defendant’s activities in the forum; and 3) whether the exercise of jurisdiction is reasonable and comports with fair play and justice. *State ex rel. Third-Party Defendant Health Plans v. Nines*, 244 W. Va. 184, 193, 852 S.E.2d 251, 260 (2020).

Here, all three inquiries show that personal jurisdiction is lacking over FINA and TopCo. An “essential inquiry [for specific jurisdiction] is whether the defendant has purposefully acted to obtain benefits or privileges in the forum state.” Syl. Pt. 3, *Pries v. Watt*, 186 W. Va. 49, 52 410 S.E.2d 285, 288 (1991). Neither FINA nor TopCo is registered to do business in West

Virginia. They are merely limited liability companies that own, either directly or indirectly, EIN. EIN, however, is a separately constituted limited liability company. “A limited liability company is a legal entity distinct from its members.” W. Va. Code § 31B-2-201. And, EIN’s “debts, obligations and liabilities . . . , whether arising in contract, tort or otherwise, are solely the debts, obligations and liabilities of [EIN].” *Id.* § 31B-3-303(a). Ownership of EIN does not constitute purposeful acts to obtain benefits or privileges in West Virginia by either EINA or TopCo.

Likewise, the controversy does not arise out of EINA or TopCo’s activities in West Virginia. Again, both EINA and TopCo are organized as Delaware limited liability companies, but they are holding companies, not operating companies—that is, neither has any operations or employees. For the same reasons that EINA and TopCo have not purposefully availed themselves of West Virginia, AMBIT’s claims against EIN do not extend to EINA or TopCo simply through EIN’s chain of ownership. Again, EIN is a separately formed limited liability company that is legally distinct from its sole member, EINA, and, in turn, EINA is distinct from its owners, including, formerly, TopCo.

Neither do AMBIT’s conspiracy allegations, *see* Am. Compl. ¶¶ 148-153, create purposeful availment. In a recent case, the West Virginia Supreme Court of Appeals held in a Business Court case that a similar conspiracy claim did not give rise to purposeful availment. *State ex rel. Third-Party Defendant Health Plans v. Nines*, 244 W. Va. 184, 852 S.E.2d 251 (2020). The West Virginia Supreme Court quoted the U.S. Supreme Court that “the relationship must arise out of contacts that the defendant himself creates with the forum State.” *Id.* (quoting *Walden*, 571 U.S. at 284). Having concluded “that the [out-of-state defendants] ha[d] not purposefully availed themselves of the privilege of conducting business in West Virginia,” the

West Virginia Supreme Court would not change its conclusion “based on the bare allegation that the [out-of-state defendants and an in-state defendant] were engaged in a conspiracy.”

The Court finds that under these circumstances, and from the guidance of the Supreme Court of Appeals in *State ex rel. Third-Party Defendant Health Plans v. Nines*, and other relevant law, it would be neither fair nor just to exercise jurisdiction over EINA or TopCo. Haling them into a West Virginia court would be unfair and unjust in this case. Moreover, because they lack physical operations and employees, haling them into court is impractical.

The Court considers AMBIT’s request for jurisdictional discovery. While this motion was initially filed in 2021, and AMBIT responded at that time that it needed to conduct jurisdictional discovery, much of this requested discovery has now been completed. Depositions were taken of Alex Campos, CEO of Vensure Employer Services, Inc. and other Vensure entities, Kara Childress, CFO of Vensure Employer Services, Inc. and other Vensure entities, Eric Vogelsberg, Chief Accounting Officer and CFO of Vensure Employer Services, Inc. from 2017 to 2020, and Justin Sirpilla, Senior Vice-president of mergers and acquisitions of Vensure Employer Services, Inc. until 2021. *See* Reply, p. 3-7. Even so, AMBIT asserts in its May 21, 2024 Reply that it moves the Court for leave to conduct jurisdictional discovery into the relationships of the corporate entities and the entities’ relationships to West Virginia. *See* AMBIT’s Reply, p. 3. However, the Court notes AMBIT does not detail what additional discovery, besides the depositions of the individuals described above, it seeks to conduct.

On the other hand, Defendants detail that the jurisdictional discovery conducted produced evidence that personal jurisdiction does not exist. *See* Reply, p. 3-7. For example, Kara Childress testified in her deposition that the various ETN companies are (and are conducted as) separately held companies with separate licenses, separate client services agreements, and are

formed for very specific purposes for different states. *Id.* at 4. The Court considers the similarities between these circumstances and those of the various entities in *State ex rel. Third-Party Def. Health Plans v. Nines*, 244 W. Va. 184, 852 S.E.2d 251 (2020). Further, with regard to funds, Ms. Childress testified that all profits and earnings stay within FIN. *See Reply*, p. 5.

Likewise, Defendants proffered that Eric Vogelsberg testified in his deposition that when Vensure acquired FIN in 2019, FIN remained a separate LLC, and when Vensure acquired PEO entities (such as EIN), the entities continued to be active business entities, maintaining their own assets within that form and retaining their own customer services agreements. *Id.* at 6.

The jurisdictional discovery conducted has shown that no connection exists between AMBIT and TopCo and FINA, and that no connection exists between TopCo and FINA and this civil action or to West Virginia. For this reason, the Court finds AMBIT's Response and May 2024 Reply do not support the Court's exercise of jurisdiction over TopCo and FINA.


For all of these reasons, the Court finds that Defendants' Motion to Dismiss for Lack of Personal Jurisdiction by Defendants Vensure Topco, LLC and Employers' Innovative Network Acquisition, LLC should be GRANTED.

CONCLUSION

Accordingly, it is hereby ADJUDGED and ORDERED that Defendants' Motion to Dismiss for Lack of Personal Jurisdiction by Defendants Vensure Topco, LLC and Employers' Innovative Network Acquisition, LLC is hereby GRANTED, and Defendants Vensure Topco, LLC and Employers' Innovative Network Acquisition, LLC are HEREBY DISMISSED with prejudice from this matter. Further, this matter shall continue pursuant to law upon the claims against the remaining defendants.

The Court notes the objections and exceptions of the parties to any adverse ruling herein. The Clerk shall enter the foregoing and forward attested copies hereof to all counsel, to any *pro se* parties of record, and to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

September 22, 2025
date of entry


JUDGE MARYCLAIRE AKERS
JUDGE OF THE WEST VIRGINIA
BUSINESS COURT DIVISION