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7/14/2023 3:09 PM
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IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

AMSURG EC WASHINGTON, INC. a Tennessee corporation; and THE ENDOSCOPY CENTER OF WASHINGTON D.C., L.P., a Tennessee limited partnership,	)	
Plaintiffs,	)	
v.	)	**Case No. 23-0189-II**
MGG GROUP COMPANY, INC., a Maryland corporation; MICHAEL L. WEINSTEIN, M.D., and DOMINIQUE HOWARD, M.D.,	)	
Defendants.	)	

FINAL ORDER AND MEMORANDUM

This matter came before the Court on June 9, 2023, upon a Motion to Dismiss filed by Defendants pursuant to Tenn. R. Civ. P. 12.02(2). In their motion, MGG Group, Company, Inc., Michael Weinstein, M.D. and Dominique Howard, M.D. (collectively "Defendants") assert that the Court does not have personal jurisdiction over them as they are residents of the State of Maryland, practicing in the District of Columbia, and have not had sufficient minimum contacts with the forum state of Tennessee. In the alternative, the Defendants argue that the Court should dismiss the Complaint based upon the doctrine of forum *non conveniens*. Further, that if the Court has personal jurisdiction and Tennessee is a proper forum, that the Complaint fails to state a claim upon which relief may be granted.

The parties filed additional submissions to support their positions in regard to this motion, including declarations or affidavits from both a representative of Plaintiffs and Defendants Dr.

Howard and Dr. Weinstein.[1] Having considered all those materials, the relevant caselaw and the arguments of counsel, the Court is now ready to rule.

MOTION TO DISMISS LEGAL STANDARD

A motion to dismiss based upon Tennessee Rule of Civil Procedure 12.02(2) for lack of personal jurisdiction "challenges the trial court's ability to proceed with the claim or claims against a defendant." *Gordon v. Greenview Hosp., Inc.*, 300 S.W.3d 635, 643 (Tenn. 2009). The burden is on the plaintiff to demonstrate, by a preponderance of the evidence, that the court has personal jurisdiction over the named defendants. *Id.*; *see also Crouch Railway Consulting, LLC v. LS Energy Fabrication, LLC*, 610 S.W.3d 460, 470 (Tenn. 2020). A motion challenging personal jurisdiction is to be filed early and may be supported by an affidavit and other evidence, and "if a defendant supports its motion with affidavits, the plaintiff must establish its prima facie showing of personal jurisdiction over the defendant by filing its own affidavits or other written evidence." *Gordon*, 300 S.W.3d at 643-644 (citations omitted); *Crouch*, 610 S.W.3d at 470 (citations omitted). "[T]he trial court's responsibility is to determine whether the plaintiff has alleged or presented sufficient facts to survive the motion to dismiss." *Gordon*, 300 S.W.3d at 644 (citations omitted). "Dismissal is proper only if all the specific facts alleged by the plaintiff collectively fail to establish a prima facie case for personal jurisdiction." *Id.* (citations omitted). The plaintiff's factual allegations must also be taken as true and factual disputes resolved in the plaintiff's favor. *Id.*; *Crouch*, 610 S.W.3d at 470.

[1] After the hearing, on June 29, 2023, Plaintiffs filed the Declaration of Rich Moore with attached emails associated with Dr. Howard's email address to support its argument. The Court has also reviewed this evidence in rendering this decision.

PLAINTIFFS' FACTUAL ALLEGATIONS AND UNDISPUTED FACTS RELEVANT TO THE MOTION[2]

Parties and Background

Plaintiffs AmSurg EC Washington, Inc. ("AmSurg") and The Endoscopy Center of Washington, D.C., L.P. ("ECW") are, respectively, a corporation organized under the laws of the State of Tennessee with its principal place of business located at 1A Burton Hills Blvd., Nashville, Tennessee, 37215, and a Tennessee limited partnership organized under the Tennessee Revised Uniform Limited Partnership Act, Tennessee Code Annotated §§ 61-2-101, *et seq*., as amended. Defendant MGG Group, Company, Inc. ("MGG Group") is a Maryland corporation with several physician shareholders who specialize in gastroenterology, including Defendants Dr. Howard and Dr. Weinstein.

Defendants Dr. Howard and Dr. Weinstein are Maryland residents and gastroenterologists who practice in Maryland and/or D.C. (Howard Decl., at ¶2-3; Weinstein Decl., at ¶¶2-3). Plaintiffs allege that Dr. Howard and Dr. Weinstein are (or were) directors of MGG Group with the ability to control and direct the decision-making and operations of MGG Group.

The Partnership Agreement

In 1993, AmSurg and MGG Group, through its physician shareholders, entered into an Agreement of Limited Partnership (the "Partnership Agreement") to form ECW as a Tennessee limited partnership with an initial term of fifty years. Dr. Weinstein was an original signatory to the Partnership Agreement, but Dr. Howard has not signed the agreement or any amendment. (Howard Decl., at ¶7). Since its creation, ECW has owned and operated an ambulatory surgery center located in Washington, D.C., that specializes in non-emergency, outpatient gastrointestinal

[2] These are taken from the Complaint. Any outside affidavits, declarations and/or evidence submitted in support or response to the Tenn. R. Civ. P. 12.02(2) motion relied upon in this Memorandum and Order is cited as the reference for the finding.

procedures (the "ASC"). Pursuant to the Partnership Agreement, AmSurg acts as ECW's general partner, and MGG Group acts as ECW's limited partner. The partnership originally agreed that AmSurg receive 60% of any profit from ECW while the physician shareholders of MGG Group receive 40%. Later, that agreement was modified to give AmSurg 51% of any profit while the physician shareholders of MGG Group receive 49%. The Partnership Agreement provides that "[t]he business to be conducted by the Partnership shall be to own and operate the [the ambulatory surgery center] and to carry on any and all activities necessary, proper, convenient, or advisable in connection therewith." (Partnership Agreement, § 4).

Despite AmSurg's position as ECW's general partner, ECW has been governed by a four-person Advisory Board composed of two representatives each from AmSurg and MGG Group. At all times relevant to this action, Dr. Weinstein and Dr. Howard have served as MGG Group's representatives on the Advisory Board. Dr. Weinstein has served on the Advisory Board off and on since 1993, but presently since 2014, and Dr. Howard has served on the Advisory Board since 2016. (Weinstein Decl., ¶23; Howard Decl., ¶16). Pursuant to the Partnership Agreement, the Advisory Board must "meet at least quarterly" and shall "consult with and advise [AmSurg] with respect to certain aspects of [ECW's] operations." (Partnership Agr., § 10.1). Certain actions require Advisory Board approval, or at least three affirmative votes. (*Id*. at §§ 10.1 - 10.2). As it relates to this action, the Partnership Agreement requires Advisory Board approval before ECW can "[a]cquire any land or real property interest, including any lease." (*Id*. at § 10.2.11). Additionally, the term "Affiliate" is defined as "any person or corporation directly or indirectly controlling, controlled by or under common control with . . . the Limited Partner." (First Amendment to Partnership Agr., § 1.3). The Partnership Agreement also includes a noncompete

provision limiting the physician shareholders' ability to own or participate in a business that competes with ECW and its ASC. (Partnership Agr., § 9.3).

Lastly, the parties agreed that the Partnership Agreement would be governed by the Tennessee Revised Uniform Limited Partnership Act and that "[t]he law of the State of Tennessee shall govern the validity of the [Partnership Agreement], the construction of its terms and the interpretation of the rights and duties of the parties [thereto]." (*Id*. at § 20.5).[3]

The New Lease Agreement

Since its creation, ECW operated its ASC via a lease at 2021 K Street in Washington, D.C. that was set to expire on February 23, 2023. By early 2022, MGG Group and the physician shareholders determined that the ASC should be moved to a new location and advised AmSurg of such. MGG Group identified a new location for ECW and its ASC at 2000 Pennsylvania Avenue in Washington, D.C. and entered into lease negotiations on behalf of ECW with AmSurg's assistance.

However, in a letter dated October 10, 2022, MGG Group and the physician shareholders advised that they would not renew the ASC's lease which would terminate the partnership and, instead, wished to establish a new surgery center at the 2000 Pennsylvania Avenue location. AmSurg undertook efforts to secure space for the ASC to continue operating beyond the expiration of the lease for the 2021 K Street location and was able to secure an 18-month lease extension.

AmSurg filed suit and alleges that Defendants violated contractual obligations under the parties' Partnership Agreement, including § 9.3, their duty of good faith and fair dealing, their fiduciary duties, and their statutory duties under Tennessee law. Plaintiffs bring claims for breach

[3] ECW also contracted with a non-party, most recently Capital Digestive Care, LLC, and predecessors in interest, to provide accounts receivables "back office" services. The Court does not find the existence of that series of agreements for those services to be relevant to the analysis herein.

of contract, breach of the duty of good faith and fair dealing, breach of fiduciary duty, wrongful withdrawal, and civil conspiracy.

LEGAL ANALYSIS

Defendants initially assert in their Motion to Dismiss that the Court lacks personal jurisdiction over them in the State of Tennessee.

Personal Jurisdiction

The Tennessee Supreme Court has provided a thorough and extensive discussion of the backdrop for the law of personal jurisdiction in this state in three relatively recent cases. *Crouch Railway Consulting, LLC*, 610 S.W.3d 460; *State v. NV Sumatra Tobacco Trading Co.*, 403 S.W.3d 726 (Tenn. 2013); *Gordon v. Greenview Hosp., Inc.*, 300 S.W.3d 635 (Tenn. 2009). The Court will draw largely from those cases to set out the legal framework for its analysis.

In 1972, Tennessee's long-arm statute, as set out in Tenn. Code. Ann. § 20-2-214, was amended "to expand its jurisdictional reach as far as constitutionally permissible." *Sumatra*, 403 S.W.3d at 740. That statute now provides that "[p]ersons who are nonresidents of this state . . . are subject to the jurisdiction of the courts of this state as to any action or claim for relief arising from," among other things, "[a]ny basis not inconsistent with the constitution of this state or of the United States." Tenn. Code. Ann. § 20-2-214(a)(6). As stated in *Gordon*, the intent "was to lengthen the reach of the long-arm statute to the farthest extent permitted by due process," and this amendment was later observed to convert the long-arm statute from a "single enumerated act" statute to a "minimum contacts" statute. *Gordon*, 300 S.W.3d at 645 (citing *Masada Inv. Corp. v. Allen*, 697 S.W.2d 332, 334 (Tenn. 1985); *Shelby Mut. Ins. Co. v. Moore*, 645 S.W.2d 242, 245-46 (Tenn. Ct. App. 1981)).

Concerns were raised that the wording of Tenn. Code. Ann. § 20-2-214(a)(6) did not expand Tennessee's ability to exercise personal jurisdiction as the General Assembly intended. *Gordon*, 300 S.W.3d at 645. Thus, in 1997, new statutes were enacted, set forth in Tenn. Code Ann. § 20-2-225(1) and (2), which provide that Tennessee court's may exercise personal jurisdiction "[o]n any other basis authorized by law" or "[o]n any basis not inconsistent with the constitution of this state or of the United States." *Id*. The constitutional limits of Tennessee's long-arm statutes are "set by the Due Process Clause of the Fourteenth Amendment to the United States Constitution." *Sumatra*, 403 S.W.3d at 741. In applying these jurisdictional principles, courts are required to "ascertain whether it is 'fair and substantially just to both parties to have the case tried in the state where the plaintiff has chosen to bring the action.'" *Gordon*, 300 S.W.3d at 646 (citing *Masada Inv. Corp.*, 697 S.W.2d at 335; *Shelby*, 645 S.W.2d at 246).

The courts recognize two types of personal jurisdiction—specific and general jurisdiction. *Gordon*, 300 S.W.3d at 646-649; *Sumatra*, 403 S.W.3d at 744. "General jurisdiction is established 'when a defendant has continuous and systematic contacts with the forum state sufficient to justify the state's exercise of judicial power with respect to any and all claims.'" *Fortis Corporate Ins. v. Viken Ship Mgmt.*, 450 F.3d 213, 218 (6th Cir. 2006) (citation omitted). Specific jurisdiction "'subjects the defendant to suit in the forum state only on claims that arise out of or relate to a defendant's contacts with the forum.'" *Id*. (citation omitted). Plaintiffs do not argue that this Court has general jurisdiction and conceded same at oral argument; rather, they contend that this Court has specific jurisdiction over Defendants.

To obtain specific jurisdiction over a party in a particular case, our Supreme Court has succinctly provided:

> Determining whether a forum state may exercise specific personal jurisdiction over a nonresident defendant is a two-step analysis which requires a court to analyze

> first whether the defendant's activities in the state that gave rise to the cause of action constitute sufficient minimum contacts with the forum state to support specific jurisdiction and, if so, whether the exercise of jurisdiction over the nonresident defendant is fair.

Crouch, 610 S.W.3d at 473 (quoting *First Cmty. Bank, N.A. v. First Tennessee Bank, N.A.*, 489 S.W.3d 369, 388 (Tenn. 2015)). In analyzing minimum contacts, courts have recognized that "a nonresident defendant's contacts 'must arise out of the defendant's own purposeful, deliberate actions directed toward the forum state,'" *First Cmty. Bank*, 489 S.W.3d at 389 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-73, 475-76 (1985)), and be substantial enough to give rise to jurisdiction, *id*. (citing *Walden v. Fiore*, 571 U.S. 277, 284 (2014); *Burger King*, 471 U.S. at 475). Whether the defendant's contacts are substantial enough to give rise to jurisdiction, courts consider "the quantity of the contacts, their nature and quality, and the source and connection of the cause of action with those contacts," *id*. (quoting *Sumatra*, 403 S.W.3d at 759-60), to determine if the contacts demonstrate that the defendant has purposefully targeted Tennessee to the extent that the defendant should reasonably anticipate being haled into court here, *id*. at 389-90.

If a plaintiff meets that burden of proof, then it shifts to the defendant to demonstrate that "the exercise of specific jurisdiction would be unfair." *Gordon*, 300 S.W.3d at 647 (citing *Burger King*, 471 U.S. at 477). When minimum contacts are found, whether the exercise of jurisdiction would be unreasonable or unfair involves a judgment concerning "the quality and nature of the defendant's contacts with the forum and the fair and orderly administration of the law." *Sumatra*, 403 S.W.3d at 751-52 (quoting *Davis Kidd Booksellers, Inc. v. Day-Impex, Ltd.*, 832 S.W.2d 572, 575 (Tenn. Ct. App. 1992)). The court should consider: (1) the burden on the defendant; (2) the interests of the forum state; (3) the plaintiff's interest in obtaining relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the several states in furthering fundamental substantive social policies. *Id*. at 752 (citing

Davis Kidd Booksellers, 832 S.W.2d at 575); *Gordon*, 300 S.W.3d at 647 (citing *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 113 (1987)).

In *Sumatra*, the Tennessee Supreme Court described the exercise of personal jurisdiction as "purposefully directing activities" to residents of the forum, of "delivering products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state" or "creating continuing obligations" with residents of the forum state. *Sumatra*, 403 S.W.3d at 750-51. In that case, the party objecting to jurisdiction manufactured products that were ultimately purchased in Tennessee, yet the Supreme Court did not find sufficient contacts for Tennessee to have specific personal jurisdiction. *Id.* at 762-65. In *Crouch*, the Court did find sufficient minimum contacts based upon the subject business electing to enter into a services contract with a company it knew was located in Tennessee and that the services would primarily occur in the state. *Crouch*, 610 S.W.3d at 478. That party also continued to direct substantial communications to the Tennessee company in the course of the contractual relationship. *Id.*

Defendants cite to two cases in their brief involving actions filed by an AmSurg entity against nonresident defendants accused of breaching contracts to support their argument: *Amsurg Naples, Inc. v. Hussey*, No. 3:08-0429, 2008 WL 3070329 (M.D. Tenn. Aug. 1, 2008), and *Amsurg Corp. v. Principati*, No. 3:10-00670, 2011 WL 780676 (M.D. Tenn. Feb. 28, 2011). The Court finds the facts and analysis set forth in *Hussey* similar to the facts in this case and very persuasive.

In *Hussey*, the district court ultimately found that it did not have personal jurisdiction over the defendants because they had not purposefully availed themselves of Tennessee law by entering into a Tennessee limited partnership which was governed by Tennessee law. *Hussey*, 2008 WL 3070329, at *5. In that case, the plaintiff, AmSurg Naples, Inc., was a Tennessee corporation, the individual defendants were gastroenterologists residing and working in Florida, and the corporate

defendant, The Endoscopy Center of Naples, Inc. ("ECN"), was a Florida corporation with its only place of business in Naples, Florida. *Id.* at *1. Like the instant case, ECN and its physician shareholders entered into a limited partnership agreement with AmSurg to form a Tennessee limited partnership, with AmSurg acting as sole general partner and ECN the sole limited partner. *Id*. The only purpose of the partnership was to operate an endoscopy medical center (the "Center") in Naples with Amsurg having a 60% interest and ECN having a 40% interest in the Center. *Id*. The Center was staffed exclusively with Florida doctors and cared for Florida patients. *Id*. At some point, a competing surgery center was established, and it was alleged that the individual defendants solicited the Center's employees and began performing medical procedures at the new center. *Id*. at *2. The AmSurg plaintiff brought suit in Tennessee alleging breach of fiduciary duties, breach of contract, and fraud, as well as civil conspiracy for opening a surgery center in competition with the Center. *Id*. The defendants filed a motion to dismiss asserting that none of them had any significant contact with Tennessee and no contacts which would allow for personal jurisdiction. *Id*. The partnership agreement contained an arbitration clause requiring arbitration of disputes that related to interpretation of the partnership agreement in Florida, but all disputes were governed by Tennessee law. *Id*.

In its analysis, the *Hussey* court did not find either general or specific personal jurisdiction. Rather, that "AmSurg has wholly failed to show that any of the Defendants had continuous and systematic contacts with Tennessee so as to justify general personal jurisdiction," based upon the declarations of the individual defendants which "show[ed] no material contacts with Tennessee," and, more specifically, that "the individual Defendants reside and work in Naples, Florida," "[e]ach has traveled to Tennessee between one and three times in their lifetimes, but never for professional or business reasons, other than for medical education or medical conferences,"

"[n]one. . . have conducted business in Tennessee, or solicited or advertised for business in Tennessee," "[n]one have bank accounts in Tennessee," and [a]ll . . . are engaged in the practice of medicine which is limited to caring for Florida patients in Florida." *Id*. at *4. Additional relevant facts were that the agreements at issue were negotiated in Florida, the contract closing took place in Florida, and the agreements did not impose duties that would have required the individual defendants to travel to, or perform services in, Tennessee. *Id*. Likewise, ECN had "little, if any, contact with Tennessee." *Id*.

As to specific jurisdiction, the district court was not convinced that the defendants purposefully availed themselves of Tennessee law by virtue of entering into a Tennessee limited partnership which was to be governed by Tennessee law. *Id*. at *5. While the partnership agreement included a Tennessee choice of law provision, the district court noted that the agreement also provided that all disputes relative to the agreement are to be resolved by binding arbitration in Fort Meyers, Florida, and explained that "a contractual choice of law provision is merely one factor a court must consider in determining whether a party to the Agreement purposefully availed itself of the law of that forum," and "[o]ther factors to be considered include prior negotiations, contemplated future consequences, the terms of the agreement and the parties' actual course of dealing." *Id*. (citing *Burger King*, 471 U.S. at 482; *Bridgeport Music Inc. v. Still in the Water Pub.*, 327 F.3d 472, 482 (6th Cir. 2003)). Based on this, the district court found:

> Here, the record shows that the Agreements were negotiated exclusively in Florida with Florida residents, the Agreements were performed exclusively in Florida, and the operation of the Center occurred in Florida. *See, Spectrum Scan, LLC v. AGM California*, 2007 WL 2258860 (6th Cir. 2007) (Kentucky did not have personal jurisdiction over defendants where negotiations relating to contracts did not take place in Kentucky, all in-person meetings occurred outside Kentucky, contracts did not require defendants to go to Kentucky to carry out responsibilities, and subject matter of contracts was in California, even though contracts contained Kentucky choice-of law provisions); *Calphalon*, 228 F.3d at 723 ("even though [defendant] was on notice that the contract was to be governed by Ohio law, it did not make a

> deliberate affiliation with that state nor could it reasonably foresee possible litigation there").
>
> Further, any alleged breach did not occur in Tennessee but instead arose from actions in Florida. The allegations are that Defendant Winzenried opened an endoscopy center in competition with AmSurg which the individual Partnership Defendants then joined. They then in turn allegedly lured other Center employees to join them. All of these events occurred in Florida.
>
> Finally, while AmSurg, a Tennessee company, is alleged to have been damaged by Defendants' action, this Court cannot conclude that this is a substantial enough connection with the forum state to make the exercise of jurisdiction over the Defendants reasonable. . . . Plaintiff has not shown that it would be reasonable to litigate in a Tennessee court a dispute with Florida doctors, who operated a Florida medical practice serving Florida patients and who then allegedly conspired to open a competing Florida medical center. This is particularly so since it appears virtually all of the relevant witnesses live and work in Florida. While Plaintiff certainly has an interest in obtaining any relief to which it may be entitled, there is no showing that such relief may not be had in Florida. . . . Indeed, it appears that it was the intention of the parties that disputes about the Agreement were to be resolved through binding arbitration in Fort Meyers, Florida.

Id. at *5-6.

Minimum Contacts

With the *Hussey* analysis in mind, the Court turns to address whether Plaintiffs have shown that Defendant's contacts were purposeful and substantial enough to merit the exercise of personal jurisdiction. *See Burger King*, 471 U.S. at 475 ("Jurisdiction is proper . . . where the contacts proximately result from actions by the defendant *himself* that create a 'substantial connection' with the forum state."); *First Cmty. Bank*, 489 S.W.3d at 389 ("The defendant's connection with the forum state must be not only intentional, but also 'substantial' enough to give rise to jurisdiction."). There must be some act or acts by which Defendants "purposefully availed themselves of the privilege of conducting activities within Tennessee, or stated another way, deliberately engaged in activities directed at Tennessee." *Crouch*, 610 S.W.3d at 477-78 (citing *Burger King*, 471 U.S. at 475-476).

Plaintiffs argue that Defendants purposefully availed themselves of the laws of Tennessee by willingly entering the 50-year Partnership Agreement with AmSurg, a Tennessee corporation, to form ECW, a Tennessee limited partnership. The Partnership Agreement contains a Tennessee choice of law provision, and this suit arises directly out of the agreement and Defendants' misconduct under that contract, which was directed to and felt by AmSurg and ECW in Tennessee. Accordingly, Plaintiffs argue that Defendants are subject to personal jurisdiction in Tennessee.

Plaintiffs rely upon the Declaration of Tesha Simpson, a Florida resident and the Chief Operating Officer of AmSurg Holdings, LLC, the parent company and sole owner of AmSurg, and prior to that, the President of the company's Gastroenterology Division in which she was responsible for managerial oversight for its GI-related ambulatory surgery center partnerships. (Simpson Decl., ¶2). Between 2018 and 2022, some of the AmSurg designees to ECW's Advisory Board (the "Board") resided in Tennessee and performed their duties on the Board while working "from or through AmSurg's offices in Nashville," including Nick Dason, Erik Hamnes, Tonya Wagner, and Jillian Wright. (*Id*. at ¶8). It is unclear from the record where the other three named AmSurg representatives resided while they performed their duties on the Board, but the Court can reasonably assume that they were not residents of Tennessee. From 2018 to 2022, MGG Group received total distributions from ECW in excess of $2.3 million, as calculated and distributed by AmSurg's finance department in Nashville. (*Id*. at ¶9). Further, that AmSurg carried out numerous tasks in furtherance of the ECW partnership in Tennessee, such as executive oversight, regulatory compliance, contracting and financial management, HR training and support, and that ECW's financial and operating reports were prepared in Tennessee and its books and records are maintained in Tennessee. (*Id*. at ¶10). Plaintiffs also contend that MGG Group shareholders, including Dr. Weinstein and Dr. Howard, have emailed AmSurg representatives in Tennessee

about ECW business, conducted video conferences about ECW with AmSurg representatives they knew were in Tennessee, and/or spoke via telephone about ECW with those same individuals. (*Id*. at ¶12). This last statement is supported in part by the Declaration of Rich Moore, an employee of Envision Healthcare, the ultimate corporate parent company to AmSurg. He is an eDiscovery Manager and conducted a search across the company's computer servers for emails from an email address associated with Dr. Howard sent to AmSurg employees Erik Hamnes and Libby Wylie during the period January 1, 2022 to the present, and he testified that those AmSurg representatives received more than 300 emails from Dr. Howard's email address. (Moore Decl., ¶¶2-3). The search results, some of which were attached to the Declaration, demonstrated that Dr. Howard communicated via email with two AmSurg representatives located in Tennessee about ECW business from January 1, 2022 to the present, such as agreeing to implement a collections policy and responding to Hamnes about quarterly leadership bonuses. However, of the six email chains attached to the Declaration, all but two demonstrated that Dr. Howard was responding to communications on which the AmSurg representatives were merely cc'd.

In contrast, the declaration of Dr. Howard and affidavit of Dr. Weinstein demonstrate a lack of purposeful and substantial contacts with Tennessee. Both doctors are residents of Maryland and work either in Maryland and/or Washington, D.C. (Howard Decl., ¶3; Weinstein Decl., ¶3). Dr. Howard has only visited Tennessee once, with her husband, for a one-day conference he was attending in Nashville approximately twenty years ago, before she was a shareholder in MGG Group. (Howard Decl., ¶11). Dr. Weinstein has only visited Tennessee twice in the last ten years; he visited with AmSurg representatives in Nashville around 2017 or 2018 to discuss the future and not to renegotiate the Partnership Agreement or renewal of the ACS lease, and his second visit was in November 2020 for pleasure. (Weinstein Decl., ¶20). Neither has conducted business in

Tennessee or solicited or advertised for business in Tennessee. (Howard Decl., ¶14; Weinstein Decl., ¶21). Both are engaged in the practice of medicine which is limited to caring for D.C., Maryland, or Virginia residents in either Maryland and/or D.C. (Howard Decl., ¶10; Weinstein Decl., ¶19).

Moreover, Dr. Howard did not sign the Partnership Agreement, but she is a shareholder of the MGG Group, who is a signatory to the Partnership Agreement. Dr. Weinstein is an original signatory to the Partnership Agreement in 1993 and testified that he was involved in the negotiations, which were initiated by AmSurg in D.C. and negotiated exclusively in D.C. and, further, that closing of the agreement took place there. (Weinstein Decl., ¶¶6-8). The Partnership Agreement did not impose duties or responsibilities that would have required the individual Defendants to travel to, or perform services in, Tennessee. As to ECW's Advisory Board meetings, both testified that the meetings occurred in-person in Washington, D.C. or Maryland until 2020, when they were held virtually due to the pandemic and hosted at the ASC. (Howard Decl., ¶¶19-20; Weinstein Decl., ¶¶25-26). Neither has traveled to or performed services in Tennessee in connection with their role as a member of ECW's Advisory Board. (Howard Decl., ¶17; Weinstein Decl., ¶24). Similarly, MGG Group is a Maryland corporation with its principal place of business in Maryland and is comprised of seventeen physician shareholders that live in either Maryland, Virginia or North Carolina. (Weinstein Decl., ¶¶11-14).

Plaintiffs do not dispute this but contend that Defendants actively participated in the running of the business of the ASC and are co-owners of the business, a Tennessee partnership, with AmSurg, a Tennessee entity, which is more than enough to establish minimum contacts necessary for personal jurisdiction. Further, that the individual Defendants engaged in emails, phone calls, and video conferences with AmSurg representatives that were located in Tennessee

in furtherance of the business. And, that the length and duration of the partnership since 1993 cannot be ignored.

As in *Hussey*, AmSurg, the general partner, has sued MGG Group, the limited partner, for breach of a partnership agreement to operate an ambulatory surgery center outside of the forum state. The partnership agreement at issue here is also governed by Tennessee law, and the alleged breach of the partnership agreement and tortious misconduct involving the new lease occurred entirely outside of Tennessee in Washington, D.C. As the district court in *Hussey* explained, "a contractual choice of law provision is merely one factor a court must consider in determining whether a party to the Agreement purposefully availed itself of the law of that forum." *Hussey*, 2008 WL 3070329, at *5 (citing *Burger King*, 471 U.S. at 482). Other factors to consider include "prior negotiations, contemplated future consequences, the terms of the agreement and the parties' actual course of dealing." *Id.* (citing *Bridgeport Music Inc.*, 327 F.3d at 482). As in *Hussey*, the record here indicates that the Partnership Agreement was negotiated exclusively in D.C., the Board meetings were conducted either in D.C., Maryland, or virtually, that Drs. Howard and Weinstein never traveled to Tennessee in connection with their role as a member of the Board, and the ASC was operated in D.C. While Plaintiffs point to AmSurg's activities in Nashville demonstrating some oversight of the operation of the ASC, the sole purpose of the Partnership Agreement was to jointly operate an ASC located in D.C., staffed by D.C. practitioners, to provide care for patients in the D.C. and surrounding area. Further, that the question of whether a defendant availed itself of the privilege of acting in a state is determined by the defendant's actions and not the plaintiff's actions. *Hussey*, 2008 WL 3070329, at *5 (citing *Nationwide Mut. Ins. Co. v. TRYG Int'l Ins. Co.*, 91 F.3d 790, 795-96 (6th Cir. 1996)); *see also Crouch*, 610 S.W.3d at 477 (citing *Burger King*, 471 U.S. at 475). Furthermore, although emails and video calls are a contact for purposes of

personal jurisdiction analysis, *Crouch*, 610 S.W.3d at 478 (citations omitted), the Court does not find, based on the record, that Plaintiffs have shown that the Defendants' contacts with the state were purposeful and substantial enough to exercise personal jurisdiction. In fact, the emails attached to Moore's Declaration demonstrate that Dr. Howard was largely copying the Tennessee AmSurg representatives on communications that had not been initiated by her (or them). *Id*. at 481 (stating that "[t]he mere fact that Lonestar sent communications to Tennessee does not automatically render such contacts sufficient to confer jurisdiction.") (citing *Phillips Exeter Acad. v. Howard Phillips Fund*, 196 F.3d 284, 290 (1st Cir. 1999) (stating that it is the "content of the parties' interactions that creates constitutionally significant contacts"). Moreover, that the Board meetings were traditionally conducted in-person in D.C., and later, via video conference, with some AmSurg representatives located in Tennessee. This, despite the Tennessee choice-of-law provision, does not show that Defendants deliberately engaged in activities directed at Tennessee. While Plaintiffs argue that the length and duration of the agreement is significant, courts must focus on "the quality of the acts associated with the contractual relationship rather than the duration of the relationship." *Crouch*, 610 S.W.3d at 480 (citing *Calphalon Corp. v. Rowlette*, 228 F.3d 718, 722 (6th Cir. 2000)). The Court cannot find sufficient minimum contacts based on the lack of any purposeful or intentional acts on the part of Defendants and that Defendants could not reasonably anticipate being haled into a Tennessee court, especially considering the sole purpose of the Partnership Agreement was to jointly operate an ASC located in D.C., and the alleged breach did not occur in Tennessee but arose from actions outside of Tennessee—in D.C.[4]

[4] Plaintiffs cite the Memorandum Opinion in *AmSurg Glendale, Inc. v. Glendale Surgery Partners*, No. 3:16-cv-00862, D.E. No. 32 (M.D. Tenn. Jan. 10, 2017), as persuasive authority to counter *Hussey*. That case was one in which plaintiffs sought judicial confirmation of an arbitration award rendered by a panel sitting in California, where the subject surgery center and physician resided. The court acknowledged *Hussey* and then determined that it had personal jurisdiction in that case. Given the different procedural posture of that case to this one, the Court does not find it to be more persuasive than *Hussey* or to provide a basis to disregard *Hussey*. In particular, the Court notes the parties conducted the arbitration in California, and the defendants were only brought to Tennessee for an enforcement action.

Whether Jurisdiction Would Be Unreasonable or Unfair

Even if minimum contacts were found, the next step of the analysis is to determine whether the exercise of jurisdiction would be unreasonable or unfair, with the burden shifted to the defendant. *Gordon*, 300 S.W.3d at 647 (citing *Burger King*, 471 U.S. at 477; *Moore's Federal Practice* §§ 108.42[1], at 108-54, 108.42[6], at 108-77). The court should consider: (1) the burden on the defendant; (2) the interests of the forum state; (3) the plaintiff's interest in obtaining relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the several states in furthering fundamental substantive social policies. *Crouch*, 610 S.W.3d at 485 (citing *Sumatra*, 403 S.W.3d at 752) (other citations omitted).

The Court finds that the burden on Defendants would be substantial—the individual Defendants work and reside in Maryland and/or D.C., and the shareholders of MGG Group reside in either Maryland, Virginia, or North Carolina. The sole purpose of the Partnership Agreement was to operate an ASC located in D.C., and the alleged breach stemming from this action arose from actions that occurred in D.C. Thus, many potential witnesses who have relevant information would likely reside in the D.C. and surrounding area. While Tennessee does have an interest in providing Plaintiffs, both Tennessee entities, with a forum to enforce its contracts, the agreement was not initiated, negotiated, or executed in Tennessee. Balancing all the factors, the Court concludes that these factors weigh in Defendants' favor and finds it would be manifestly unfair to require Defendants to litigate this dispute in Tennessee.

CONCLUSION

Based on the foregoing and the entire record, the Court finds that it does not have personal jurisdiction over any of the Defendants in this dispute, as Plaintiffs have failed to establish a *prima*

facie case for personal jurisdiction. Given that finding, it is unnecessary for the Court to evaluate the forum *non conveniens* or Rule 12.02(6) bases Defendants bring in their motion in the alternative.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Defendants' Rule 12.02(2) motion is GRANTED, that it does not have personal jurisdiction over Defendants in this case, and it is therefore DISMISSED without prejudice.

Costs are to be taxed to Plaintiffs.

It is so ORDERED.

s/Anne C. Martin
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CHANCELLOR, PART II

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RULE 58 CERTIFICATION

A copy of this Order has been served by U.S. Mail or the Court's electronic filing system on all parties or their counsel named above.

s/Megan Broadnax
Deputy Clerk & Master

7-14-23
Date