

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

**FRANCIS J. SAVARIRAYAN, M.D.,** )  
)  
**Plaintiff,** )

**Case No. 1:10-CV-04723**

v. )

**Honorable Judge William T. Hart**

**NEIL A. BRUNETZ, JD., of the Law** )  
**Firm MARTIN & MILLER, LAW and** )  
**ATTORNEY For BLUE CROSS BLUE** )  
**SHIELD OF TENNESSEE, BLUE** )  
**CROSS BLUE SHIELD OF** )  
**TENNESSEE, BLUE CROSS BLUE** )  
**SHIELD OF ILLINOIS, Brian** )  
**Cummings JD et al., DOE #1, DOE#2,** )  
**DOE#3, DOE#4** )

**Honorable Magistrate Judge Young Kim**

**MOTION TO DISMISS OF DEFENDANTS  
NEIL A. BRUNETZ AND THE LAW FIRM OF  
MILLER & MARTIN PLLC PURSUANT TO  
RULES 12(b)(1), (2), (3), and (6) OF THE  
FEDERAL RULES OF CIVIL PROCEDURE**

Defendants Neil A. Brunetz (“Brunetz”) and the law firm of Miller & Martin PLLC (“Miller & Martin”) (hereinafter collectively “Moving Defendants”)<sup>1</sup>, move this Court for the entry of an order dismissing the claims asserted against them. This motion is brought in accordance with the provisions of Federal Rules of Civil Procedure 12(b)(1), 12(b)(2), 12(b)(3), and 12(b)(6).<sup>2</sup> In support of this motion, Moving Defendants state as follows:

---

<sup>1</sup> In his Complaint, the Plaintiff refers to the firm as “Martin & Miller, Law,” but the proper name of the firm is Miller & Martin PLLC.

<sup>2</sup> In addition, a motion under Rule 12(b)(5) would also be appropriate because the Plaintiff failed to make proper service of summons upon Miller & Martin. This is due to the fact that Plaintiff sent a copy of the Complaint and summons to the law firm’s Chattanooga, Tennessee office without designating a proper recipient as required by Rule 4.04 of the Tennessee Rules of Civil Procedure. Nonetheless, in an effort to move forward on more substantive issues, Moving Defendants will not contest service.

1. The sole-named plaintiff in this action is Francis J. Savarirayan. The Plaintiff filed his Complaint on July 28, 2010, and on October 28, 2010, prior to serving the Complaint, he filed a First Amended Complaint.

2. The First Amended Complaint contains two counts, entitled First Claim for Relief and Second Claim for Relief. The First Claim for Relief purports to assert a class action on behalf of Plaintiff and all other “Foreign Medical Graduates” against “Blue Cross Blue Shield.” The claim alleges that Blue Cross Blue Shield violated Title VII of the Civil Rights Act of 1964 by discriminating against “Foreign Medical Graduates” in “processing and paying bills for services performed for patients insured with BCBS.” (First Amended Complaint, First Claim for Relief, ¶¶ 62-69). The Second Claim for Relief purports to assert a claim on behalf of the “named plaintiffs individually for their non-class claims” (which presumably would be a claim brought by just the Plaintiff) against “Blue Cross Blue Shield” alleging that Blue Cross Blue Shield “discriminated against named plaintiffs on the basis of their race, color, natural origin and age” by paying the named plaintiffs less than they paid “white ethnic physicians for similar services.” (First Amended Complaint, Second Claim for Relief, ¶¶ 71-74).

3. The allegations against Brunetz, an attorney, and the law firm at which he practices, Miller & Martin, are set forth in Paragraphs 22-28 of the First Amended Complaint. In sum, the Plaintiff alleges that Brunetz and Miller & Martin represented Blue Cross Blue Shield of Tennessee against the Plaintiff in two lawsuits that were initiated in a state court and a federal court in Tennessee (First Amended Complaint, ¶¶ 22-27). The Plaintiff further alleges that Brunetz and Miller & Martin engaged in attorney misconduct by filing frivolous claims and

destroying evidence in those lawsuits in Tennessee. (First Amended Complaint, ¶¶ 27 and 28)<sup>3</sup>. Despite making the foregoing allegations, however, neither the Plaintiff's First Claim for Relief nor Second Claim for Relief has anything whatsoever to do with the alleged misconduct of Brunetz and/or Miller & Martin.

4. The First Amended Complaint alleges that this Court has subject-matter jurisdiction over this matter because it is an "action pursuant to Title VII of the Civil Rights Act of 1964" and because "there is diversity of citizenship." (First Amended Complaint, ¶¶ 13-15), although he does not allege any facts to support the diversity allegation since he does not identify where any of the defendants reside, although he does allege that he resides in Illinois. (Complaint, ¶ 6). This fact would seem to defeat diversity jurisdiction because defendant Blue Cross Blue Shield of Illinois (whose actual corporate name is Health Care Service Corporation) is incorporated in Illinois.

5. The First Amended Complaint alleges that venue is proper in this Court because the Plaintiff "has been a resident of Illinois since 2007" and because the Plaintiff "has practiced Urology for 16 years in Illinois." (Complaint, ¶ 16).

6. The First Amended Complaint contains no allegations alleging the basis for this Court's personal jurisdiction over Brunetz and/or Miller & Martin. This omission is critical. As the attached affidavit of Neil Brunetz makes clear, neither Brunetz nor Miller & Martin reside in, are located in, or maintain an office in Illinois, and the transactions which purportedly give rise to this claim occurred in Tennessee, not in Illinois. (Brunetz Aff., ¶¶ 2-6).

7. The First Amended Complaint should be dismissed as to Brunetz and Miller & Martin pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure because the Plaintiff

---

<sup>3</sup> In fact, these allegations are patently false and outrageous, and these defendants will prove them to be so if this case proceeds against them. However, the truth of these allegations are not being challenged in this motion.

has failed to assert any basis for this court's subject matter jurisdiction over any claim against them. The burden of demonstrating federal subject matter jurisdiction rests on the party asserting the claim. See *Kokkonen v. Guardian Life Insurance Co.*, 511 U.S. 375, 377 (1994) (presumption is against subject matter jurisdiction); *Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804, 810 (1986) (“[J]urisdiction may not be sustained on a theory the plaintiff has not advanced.”) The Plaintiff's Title VII claims are not asserted against Brunetz and/or Miller & Martin, nor could they be since neither of those Defendants had anything to do with the payments that were made by any Blue Cross Blue Shield to the Plaintiff or to any of the members of the purported class. Therefore, there is no “federal question” jurisdiction over the defendants. While there is diversity between the Plaintiff on the one hand and Brunetz and Miller & Martin on the other hand, the Plaintiff has not and cannot claim diversity jurisdiction here because there must be complete diversity between the Plaintiff and all named defendants to sustain diversity jurisdiction. Here, both the Plaintiff and Defendant Health Care Service Corporation (Blue Cross Blue Shield of Illinois) are residents of Illinois, so there is no jurisdiction in this court due to diversity of citizenship.

8. The Plaintiff's claims against Brunetz and Miller & Martin should also be dismissed pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure because the Plaintiff has alleged no basis for this Court to exercise personal jurisdiction over either Brunetz or Miller & Martin. Plaintiff has the burden of establishing a *prima facie* case of personal jurisdiction. *Central State Southeast and Southwest Area Pension Fund v. Reimer Express World Corp.*; 230 F.3d 934, 939 (7<sup>th</sup> Cir. 2000); *Steel Warehouse of Wisconsin, Inc. v. Leach*, 154 F.3d 712, 714 (7<sup>th</sup> Cir. 1998). Here, the plaintiff has made no allegations regarding his basis for this court to assert personal jurisdiction over Brunetz and/or Miller & Martin. As the

attached affidavit of Brunetz establishes<sup>4</sup>, neither Brunetz nor Miller & Martin resides in or maintains an office in Illinois, nor is Brunetz licensed to practice law in Illinois. (Brunetz Aff., ¶¶ 2, 4, 5). In addition, the only allegation against these Defendants involve conduct that occurred in Tennessee, not Illinois, so there is no long-arm jurisdiction over them here in Illinois. (Complaint, ¶¶ 22-28).

9. The Plaintiff's claim against Brunetz and Miller & Martin should also be dismissed pursuant to Rule 12(b)(3) of the Federal Rules of Civil Procedure because venue is improper here with regard to any claim against Brunetz or Miller & Martin. The Plaintiff alleges that venue is proper here because he resides in Illinois, but that fact is irrelevant to a venue analysis. Pursuant to 18 U.S.C. § 1391(a), venue in a diversity case is proper in the district where a defendant resides, if all defendants reside in the same state, or where a substantial part of the events or omissions giving rise to the claim occurred, or in a district which has personal jurisdiction over a defendant if there is no other district where the case can be brought. Pursuant to 28 U.S.C. 1391 (b) venue in a "federal question case" must be brought only in a district where any defendant resides, if all defendants reside in the same state, or in a district in which a substantial part of the events or omissions giving rise to the claims occurred, or in a judicial district in which any defendant is found, if there is no other district in which the action may be brought. As noted above, neither Brunetz nor Miller & Martin reside in Illinois, the Plaintiff cites no basis whatsoever for this Court to exercise personal jurisdiction over them, and the Plaintiff does not allege any acts taken by Moving Defendants occurring in Illinois. Under these facts, the only proper venue would be in Tennessee, the place where the alleged events or omissions at issue occurred, not in Illinois.

---

<sup>4</sup> In deciding a motion to dismiss for lack of personal jurisdiction, the court may consider affidavits from the parties. *Glass v. Kemper Corp.*, 930 F. Supp. 332, 337 (N.D. Ill. 1996).

10. The Plaintiff's claims against Brunetz and Miller & Martin should also be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim against those Defendants upon which relief can be granted. A cursory review of the First Amended Complaint shows that the Plaintiff has not stated any claim whatsoever against Brunetz and/or Miller & Martin. As noted above, the Plaintiff has made allegations that these Defendants engaged in certain professional misconduct in two cases in Tennessee, but these allegations have nothing to do with the Plaintiff's First Claim for Relief or Second Claim for Relief. The Plaintiff sets forth no theory of recovery whatsoever against Brunetz or Miller & Martin, nor does the Plaintiff allege that he suffered any damages based upon any actions taken by Brunetz or Miller & Martin.

Plaintiff has utterly failed to satisfy the stricter pleading standards required by the Supreme Court in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) and *Ashcroft v. Iqbal*, \_\_\_\_ U.S. \_\_\_\_, 129 S. Ct. 1937, 1949 (2009). A plaintiff must allege sufficient facts to raise his claims beyond the level of speculation. See *Iqbal*, 129 S. Ct. at 1949. Moreover, a plaintiff must "nudge [his] claims across the finish line from conceivable to plausible." *Twombly*, 550 U.S. at 570. Plaintiff here has fallen woefully short of these pleading requirements.

WHEREFORE, Defendants Brunetz and Miller & Martin request this Court to enter an order dismissing the Plaintiff's claim against Brunetz and Miller & Martin pursuant to Rules 12(b)(1), 12(b)(2), 12(b)(3), and/or 12(b)(6) of the Federal Rules of Civil Procedure, plus

award these Defendants their costs and such additional and further relief as this Court deems appropriate.

**Respectfully submitted,**

**NEIL A. BRUNETZ, JD, and the Law  
Firm of MILLER & MARTIN PLLC**

By: /s/ Mark E. Shure  
One of their Attorneys

Mark E. Shure (#06188755)  
Latimer LeVay Fyock LLC  
55 W. Monroe Street  
Suite 1100  
Chicago, IL 60603  
(312) 419-3016  
mshure@llflegal.com