

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

**K.E.E.,
M.J.M.,
M.M.A.,
S.M.F.,
A.C.J.,
J.E.H.,
S.K.P.,
C.L.K. (By Next Friend and Mother A.C.K.),
H.G.B. (By Next Friend and Mother G.L.B.),
B.C.P.,
K.M.J.,
D.T.A.,
C.V.M.,
K.A.M. (By Next Friend and Mother S.M.M.),
A.J.S. (By Next Friend and Grandmother A.A.S.),
J.L.K. (By Next Friend and Mother S.M.K.),
J.A.H. (By Next Friend and Mother S.M.H.),
C.T.K. (By Next Friend and Mother J.K.),
K.E.H. (By Next Friend and Mother F.E.H.),
M.M. (By Next Friend and Mother S.E.M.),**

Plaintiffs,

v.

CL20-5209-00

**CUMBERLAND HOSPITAL, LLC, D/B/A CUMBERLAND
HOSPITAL FOR CHILDREN AND ADOLESCENTS,**

UNIVERSAL HEALTH SERVICES, INC.,

UHS OF DELAWARE, INC.,

UHS CHILDREN SERVICES, INC.

DANIEL N. DAVIDOW,

DANIEL N. DAVIDOW, P.C., AND

HERSCHEL C. HARDEN, III,

Defendants.

**DEFENDANT UNIVERSAL HEALTH SERVICES, INC.’S MOTION TO QUASH
SERVICE OF PROCESS AND MOTION TO DISMISS BY LIMITED SPECIAL
APPEARANCE FOR LACK OF PERSONAL JURISDICTION**

COMES NOW, Universal Health Services, Inc., by counsel, and makes a limited special appearance to moves the Court to quash service of process pursuant to Va. Code §8.01-277 and to dismiss this action against it for lack of personal jurisdiction. In support of its motion, Universal Health Services, Inc. states as follows:

1. This is a lawsuit by twenty plaintiffs purportedly brought pursuant to the Multiple Claimant Litigation Act alleging various misconduct by a number of defendants, including Universal Health Services, Inc. Plaintiffs’ allegations against Universal Health Services, Inc. are lumped in with identical allegations against several other entities, which Plaintiffs refer to collectively (and inaccurately) as “UHS.” Plaintiffs’ Complaint against Universal Health Services, Inc. (hereinafter “Universal”) should be dismissed for lack of personal jurisdiction. Universal is a Delaware holding company with its principal place of business in Pennsylvania that has no relevant contacts with Virginia and does not itself own or operate any hospitals in Virginia or anywhere else. Plaintiffs’ allegations appear to be directed towards Cumberland Hospital, LLC, which is only an indirect subsidiary of Universal. Because Cumberland Hospital, LLC is not a “device, stooge, or dummy” of Universal, this Court cannot disregard the “separate corporate entities” by imputing Cumberland Hospital, LLC’s alleged acts to Universal. *Eure v. Norfolk Shipbuilding & Drydock Corp.*, 263 Va. 624, 634 (2002) (internal quotation marks omitted).

2. As a result, this Court does not have general personal jurisdiction over Universal because its contacts with Virginia are not so “substantial and of such a nature to render the corporation at home” in Virginia. *Daimler AG v. Bauman*, 571 U.S. 117, 139 n.19 (2014). Nor does specific personal jurisdiction lie because Universal has not purposefully directed any activity

toward Virginia, and any minimal contacts with Virginia are unrelated to the alleged events giving rise to this case. Forcing Universal, a foreign corporation, to litigate claims in Virginia directed not at Universal itself, but at independent and indirect subsidiaries, with the substantial costs, inconvenience, and burdens associated with such litigation would offend all “notions of fair play and substantial justice.” *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks omitted). The Court should therefore dismiss Plaintiffs’ claims against Universal for lack of personal jurisdiction. Universal moves the Court by limited special appearance and challenges only the existence of personal jurisdiction. This motion is “unrelated to adjudicating the merits” and “does not waive any objection to personal jurisdiction.” Va. Code §8.01-277(B). Should the Court deny Universal’s motion, Universal reserves the right to file responsive pleadings and motions, including but not limited to demurrers, motions to dismiss, motions to drop and sever, and pleas in bar.

BACKGROUND

3. Universal is a Delaware corporation headquartered in Pennsylvania. It is a holding company with no offices, employees, or reporters in Virginia. Universal does not own property in Virginia. Universal is not registered to do business in Virginia. In fact, Plaintiffs attempted to effect service via the registered agent of a separate entity, Universal Health Services Foundation, in Virginia, as Universal does not have a registered agent in Virginia.

4. Plaintiffs’ claims in this action appear to arise out of alleged assaults occurring over a period of years on different patients at Cumberland Hospital, a medical facility for children and adolescents who have both medical and behavioral problems. Plaintiffs are of various ages, and were allegedly patients at Cumberland Hospital at varying times. They allege injuries inflicted by a physician, a psychotherapist, staff members, and other patients.

Plaintiffs' lawsuit asserts nine causes of action:

- (1) Assault and battery by a physician against certain plaintiffs while patients at Cumberland Hospital and by a psychotherapist against one plaintiff while a patient at Cumberland Hospital (Complaint at Para. 266-275);
- (2) Breach of common law duty of supervision and care to all plaintiffs by four defendants, including Universal (Complaint at Para. 276-284);
- (3) Breach of duty arising from special relationship to all plaintiffs by four defendants, including Universal (Complaint at Para. 285-300);
- (4) Breach of assumed duty of care to all plaintiffs by four defendants, including Universal (Complaint at Para. 300-304);
- (5) Gross negligence and "reckless retention" alleged by 12 plaintiffs against four defendants, including Universal (Complaint at Para. 305-309);
- (6) False imprisonment alleged by all plaintiffs against four defendants, including Universal (Complaint at Para. 310-315);
- (7) Vicarious liability alleged by 12 plaintiffs against four defendants, including Universal (Complaint at Para. 316-334);
- (8) Alleged violations of the Virginia Consumer Protection Act by all plaintiffs against four defendants, including Universal (Complaint at Para. 335-347); and
- (9) Alleged breach of Va. Code §37.2-400 by all plaintiffs against four defendants, including Universal (Complaint at Para. 348-354).

ARGUMENT

A. Plaintiffs Have Failed to Properly Serve Universal Under Virginia Law

5. Universal does not have a registered agent in Virginia. Plaintiffs attempted to serve Universal via the registered agent of a different entity – Universal Health Services Foundation – which is not the same entity and not a defendant in this case. (See Cover Sheet, attached hereto as **Exhibit A**). Upon information and belief, Plaintiffs have not attempted any other means of service as to Universal.

6. Service upon Universal was improper, as it did not comply with Va. Code 8.01-301 for service of process upon a foreign corporation. As Plaintiffs plead, Universal is a Delaware corporation with its principal place of business in Pennsylvania.

7. Foreign corporations may be served by one of the following means: (1) personal service on any officer or director in Virginia, on the Virginia registered agent of a foreign corporation authorized to do business in the Commonwealth, or any agent of a foreign corporation transacting business in the Commonwealth without such authorization; (2) substituted service by delivery to a registered agent's designee or the Corporation Commission or on the Secretary of the Commonwealth if plaintiff is proceeding under the long-arm statute; (3) personal service outside the Commonwealth where jurisdiction is authorized under the long-arm statute; or (4) order of publication. Va. Code §8.01-301.

8. The burden of proof is on Plaintiffs "to establish jurisdiction through proper service of process pursuant to the Virginia statute." *Consolidated Engineering Co. v. Southern Steel Co.*, 88 F.R.D. 233, 235 (E.D. Va. 1980) (citing *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)). Plaintiffs have failed to meet this burden, as they did not properly serve Universal in the Commonwealth, as it has no registered agent, officers, directors, or any other persons in Virginia who may be served, and because Universal may not be served outside the Commonwealth as this Court may not exercise personal jurisdiction over Universal pursuant to the Long Arm Statute, as discussed *infra*.

9. Further, Plaintiffs' improper service of Universal may not be saved by Va. Code §8.01-288 because service did not conform to the requirements of §8.01-301. "[T]he rules governing service of process 'are there to be followed, and plain requirements for the means of effecting service of process may not be ignored.'" *Spooltech, LLC v. UPS Ground Freight, Inc.*,

2012 U.S. Dist. LEXIS 101459 at 7 (quoting *Armco, Inc. v. Penrod-Stauffer Bldg. Sys., Inc.*, 733 F.2d 1087, 1089 (4th Cir. 1984)). Applying Virginia law, the court in *Spooltech* held that the saving statute did not remedy improper service on a foreign corporation such as Universal.

B. Universal is not Subject to Personal Jurisdiction in Virginia

10. “Plaintiff bears the burden of proving by a preponderance of the evidence that the Court has personal jurisdiction over each defendant.” *Frizzell v. Danieli Corp.*, 81 Va. Cir. 427 (Cir. Ct. for City of Norfolk 2010). Plaintiff must establish “facts supporting the exercise of jurisdiction” and “conclusory pleading” is not sufficient. *E. Direct Mktg v. Coolidge Co.*, 26 Va. Cir. 282, 283 (Cir. Ct. for Arlington County 1992). “A court must analyze personal jurisdiction under the lens of either general jurisdiction or specific jurisdiction.” *Mireskendari v. Daily Mail & Gen. Trust PLC*, 2020 Va. Cir. LEXIS 104, *9 (Cir. Ct. for Fairfax County 2020) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473-74 (1985)). “General jurisdiction relates to personal jurisdiction over a defendant in a suit not arising out of or related to the defendant’s contacts with the forum.” *Id.* at *9 n. 14 (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n. 9 (1984)). “Specific jurisdiction for due process relates to personal jurisdiction where “[the minimum] contacts form the basis for the suit.” *Id.* at *9 (citing *Carefirst of Md. Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 397 (4th Cir. 2003)). Plaintiffs fail to plead facts in support of either method. If the Long Arm Statute is found to reach Universal, the Court must then determine whether the exercise of specific personal jurisdiction under the statute comports with due process under the Constitution.

1. Virginia May Not Exercise General Personal Jurisdiction Over Universal

11. “The Commonwealth may have *general* personal jurisdiction over a nonresident defendant only when that defendant has engaged in such substantial ‘continuous and systematic’

operations ‘so as to render [them] essentially *at home* in Virginia.” *N.Y. Commer. Bank v. Heritage Green Dev., LLC*, 95 Va. Cir. 278, 279 (Cir. Ct. for Fairfax County 2017) (citing *Yelp Inc. v. Hadeed Carpet Cleaning, Inc.*, 289 Va. 426 (2015), *Daimler AG v. Bauman*, 571 U.S. 117, 139 (2014)) (emphasis in original). The Supreme Court of the United States in *Daimler* held that the exercise of general personal jurisdiction over a corporation, “the place of incorporation and principal place of business are ‘paradig[m] ... bases for general jurisdiction.” *Daimler*, 571 U.S. at 137 (ellipses in original) (internal citation omitted).

12. Universal is a Delaware corporation with its principal place of business in Pennsylvania. Universal is not “at home” in Virginia and therefore the Court may not exercise general personal jurisdiction over it. Plaintiff must therefore establish, by a preponderance of evidence, the existence of specific personal jurisdiction over Universal by application of Virginia’s Long Arm Statute, Va. Code §8.01-328.1.

2. Plaintiffs Have Failed to Allege Facts to Support Specific Personal Jurisdiction Over Universal

13. Plaintiffs allege in their Complaint only that the “Court has personal jurisdiction over Defendants pursuant to Va. Code §8.01-328.1(1)-(4)”¹ without specifying which subsections of Virginia’s Long Arm Statute apply to any named defendant, including Universal. Each of the subsections of the Long Arm Statute cited by Plaintiffs permits Virginia Courts to establish personal jurisdiction over a person “who acts directly or by an agent, as to a cause of action arising from” certain contacts with the Commonwealth of Virginia. Va. Code §8.01-328.1(A) (emphasis added). Plaintiffs fail to plead any facts to support the application of any of these statutory provisions to Universal.

¹ Universal presumes Plaintiffs refer to Va. Code §8.01-328.1(A)(1)-(4).

a. Subsection (A)(1): Transacting any Business in the Commonwealth

14. Va. Code §8.01-328.1(A)(1) concerns a defendant “transacting any business in this Commonwealth” but Universal is not licensed to do business in Virginia and transacts no such business. Plaintiffs have alleged no facts to support jurisdiction beyond conclusory statements and has not alleged that any such business transactions, if they existed, give rise to Plaintiffs’ claims.

15. Plaintiffs allege that a number of defendants, including Universal, “purposefully availed themselves of the privileges of conducting business activities within the Commonwealth of Virginia such that the forum Court may exercise personal jurisdiction over them.” (Complaint, at Para. 44.) Plaintiffs’ claims are wholly conclusory, untethered to any facts alleged against Universal, and do not comport with the statutory requirements for specific jurisdiction. “Allegations asserted in ‘mere conclusory language’, devoid of articulated facts and inferences ‘not fairly and justly drawn’ therefrom are subject to demurrer.” *Mireskandari v. Daily Mail & Gen. Trust PLC*, 2020 Va. Cir. LEXIS 104 (Cir. Ct. for Fairfax County 2020) (quoting *Bowman v. State Bank of Keysville*, 229 Va. 534, 541 (1985)). Likewise, Plaintiffs’ conclusory allegations that Universal (among other named defendants) “are doing business in the Commonwealth of Virginia through the ownership, operation, management, marketing, promotion, and control of services provided by the aforementioned behavioral health care facilities, including Defendant Cumberland, and are profiting, substantially, from such activities” are insufficient to establish personal jurisdiction over Universal. Indeed, Plaintiffs’ allegations do not specify whether Universal itself is engaged in any of the listed activities and do not state any facts to support a contention that those activities serve as the basis for Plaintiffs’ claims as required by the Long Arm Statute.

b. Subsection (A)(2): Contracting To Supply Services or Things in This Commonwealth

16. Va. Code §8.01-328.1(A)(2) concerns a cause of action arising out of a defendant's "contracting to supply services or things in this Commonwealth." Plaintiffs' Complaint identifies no such contracts for goods or services giving rise to their claims against Universal. It is Plaintiffs' burden to establish jurisdiction over **each** defendant, including Universal, by pleading adequate facts. Plaintiffs have failed to allege any facts regarding any contracts by Universal which could possibly give rise to Plaintiffs' claims against it. Plaintiffs' attempt to establish jurisdiction over Universal pursuant to Subsection (A)(2) therefore fails.

c. Subsection (A)(3): Causing Tortious Injury by an Act or Omission in This Commonwealth

17. Va. Code §8.01-328.1(A)(3) concerns a defendant "causing tortious injury by an act or omission in this Commonwealth" but Universal is not licensed to do business in Virginia and engages in no such acts (or omissions) in Virginia. Plaintiffs have alleged no facts to support jurisdiction beyond their conclusory allegations applicable to a variety of defendants. Plaintiffs have identified no acts or omissions by Universal to support specific personal jurisdiction under subsection (A)(3) of the Long Arm Statute, and thus Plaintiffs' assertion of jurisdiction must fail.

d. Subsection (A)(4): Causing Tortious Injury by an Act or Omission Outside This Commonwealth

18. Va. Code §8.01-328.1(A)(4) concerns a defendant "causing tortious injury by an act or omission outside this Commonwealth" but only if that 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 Commonwealth." As with the other subsections relied upon by Plaintiffs, the vague and conclusory statements in the Complaint that

could be related to this subsection are not specific factual allegations as much as they are paraphrasing the statutory language of §8.01-328.1. It is not enough for Plaintiffs to simply allege a collective group of defendants, including Universal, “conducts substantial business in Virginia.” Complaint, at Para. 34. While Plaintiffs may have alleged injuries occurring in the Commonwealth of Virginia, they have not alleged any acts or omissions by Universal occurring inside or outside Virginia that supposedly caused those injuries. The Supreme Court of Virginia has held “the tortious injury must be caused by the act or omission outside the state and not by the persistent course of conduct within.” *Mercer v. MacKinnon*, 297 Va. 157, 162 (2019) (quoting *Willis v. Semmes, Bowen & Semmes*, 441 F. Supp. 1235, 1242 (E.D. Va. 1977)). Indeed, all of Plaintiffs’ allegations attempt to improperly combine Universal with two other corporate entities throughout the Complaint, thereby making it impossible to determine what conduct, if any, Plaintiffs attempt to attribute to Universal.

19. Even if Plaintiffs were able to allege sufficient facts against Universal to satisfy the first portion of subsection (A)(4), Plaintiffs would still fail to meet the requirements of the second portion, which requires Plaintiffs to allege sufficient facts to establish Universal “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 Commonwealth.” As noted above, Universal does not do business in Virginia. It does not own property in Virginia. It does not have offices in Virginia. It does not provide or consume goods or services consumed in Virginia, or derive substantial revenue from such goods or services. Universal is a Delaware holding company with its principal place of business in Pennsylvania. Cumberland Hospital, LLC is owned by indirect subsidiaries of Universal, not by Universal itself. Therefore, Plaintiffs have failed to demonstrate personal jurisdiction over Universal is proper under subsection (A)(4).

3. Even If the Long Arm Statute Reached Universal, Due Process Prohibits the Exercise of Personal Jurisdiction

20. “In order for the court to exercise personal jurisdiction over a nonresident defendant who falls within the reach of Virginia’s Long Arm Statute, the court must further determine whether the exercise of personal jurisdiction would violate due process. Due process requires that the nonresident entity have sufficient minimum contacts with the forum state so as not to offend ‘traditional notions of fair play and substantial justice.’ *Sutherland v. Robby Thruston Carpentry, Inc.*, 68 Va. Cir. 43, 47 (Cir. Ct. for City of Richmond 2005) (quoting *International Shoe*, 326 U.S. at 316). Judge Markow’s opinion in *Sutherland* explains that “for there to be sufficient minimum contacts, the court must find that ‘the defendant purposefully availed itself of the privilege of conducting activities within the [Commonwealth], thus invoking the benefits and protections of its laws.’” *Id.* at 47 (quoting *Burger King Corp.*, 471 U.S. at 475).

21. While *Sutherland* was a products liability case, the analysis undertaken by Judge Markow regarding purposeful availment of Virginia’s laws is illuminating: the defendant in that case “does not do business in Virginia, does not have an office, agents, employees or property in Virginia; [and] does not advertise or otherwise solicit business in Virginia...” *Id.* at 47. The court in *Sutherland* also assessed several factors in determining whether exercise of jurisdiction was “reasonable and fair,” including “the burden on the defendant, the interests of the forum State, and the plaintiff’s interest in obtaining relief.” *Id.* at 48 (quoting *Asahi Metal Industry Co. v. California*, 480 U.S. 102, 113 (1987)). In this case, the burden on Universal would be great, compelling it to litigate in a foreign state in which it does not do business and has not sought to be licensed to conduct business. The interests of Virginia as forum state, as well as those of Plaintiffs’ seeking damages, would be adequately protected without Universal’s involvement, as there are other party defendants subject to personal jurisdiction in Virginia. Thus, even if Virginia’s Long Arm Statute

were found to reach Universal, this Court should not exercise personal jurisdiction over it because to do so would violate Universal's due process rights under the United States Constitution.

CONCLUSION

WHEREFORE, Universal Health Services, Inc. hereby moves this Honorable Court by limited special appearance to DISMISS Plaintiffs' action against it for lack of personal jurisdiction, for these reasons and any as may be advanced at oral argument on the matter.

UNIVERSAL HEALTH SERVICES, INC.



By Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of November 2020, I sent via electronic and U.S. mail, first-class postage prepaid, a true and correct copy of the foregoing to:

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