



hospitals, nursing homes and medical centers. (Compl. ¶ 3.) Plaintiff alleges that it contracted to provide services to nursing homes owned by Defendants and operated by Complete Care Services, Inc., and that Defendants failed to pay for services provided. (Compl. ¶¶ 10-13.) Complete Care Services, Inc., is located in Horsham, Pennsylvania. (Pl. Mem. Ex. C; Pl. Mem. Ex. G ¶ 1.)

## **II. Legal Standard**

### **A. Personal Jurisdiction**

Pursuant to Federal Rule of Civil Procedure 4(e), a federal court may exercise personal jurisdiction over a nonresident of the state in which the court sits to the extent authorized by the law of that state. Pennzoil Prods. Co. v. Colelli & Assocs., 149 F.3d 197, 200 (3d Cir. 1998) (citation omitted); Fed. R. Civ. P. 4(e). Pennsylvania's long arm statute authorizes exercise of jurisdiction over a nonresident person "to the fullest extent allowed under the Constitution of the United States." 42 Pa. Cons. Stat. Ann. § 5322(b) (West Supp. 2000); Pennzoil, 149 F.3d at 200. In evaluating whether an exercise of personal jurisdiction is constitutional, a court first determines whether the defendant's contacts with the forum state are sufficient to support general personal jurisdiction. Pennzoil, 149 F.3d at 200. General jurisdiction exists where a nonresident's contacts with the forum are "continuous and substantial," and permits the court

to exercise jurisdiction "regardless of whether the subject matter of the cause of action has any connection to the forum."

Id. In the absence of general jurisdiction, a court looks to whether the requirements of specific personal jurisdiction are met. Specific jurisdiction exists where the plaintiff's claim "is related to or arises out of the defendant's contacts with the forum." Id. at 201 (citations omitted). The analysis of specific jurisdiction involves two inquiries, the first mandatory and the second discretionary: (1) whether the defendant had minimum contacts with the forum such that it would have "reasonably anticipate[d] being haled into court there," id. (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)); and (2) whether "the assertion of personal jurisdiction would comport with 'fair play and substantial justice.'" Id. (citations omitted). Although the latter standard is discretionary, the Third Circuit has "generally chosen to engage in this second tier of analysis in determining questions of personal jurisdiction." Id.

"A finding of minimum contacts demands the demonstration of 'some act by which the defendant purposely avail[ed] itself of the privilege of conducting business within the forum State, thus invoking the protection and benefits of its laws.'" Id. at 203 (citations omitted). The court also takes into account "the relationship among the forum, the defendant and the litigation."

Mellon Bank (East) PSFS, Nat'l Ass'n v. Farino, 960 F.2d 1217, 1221 (3d Cir. 1992) (quoting Shaffer v. Heitner, 433 U.S. 186, 204 (1977)). The Supreme Court has provided guidance in analyzing minimum contacts in a contract matter:

[W]ith respect to interstate contractual obligations, we have emphasized that parties who 'reach out beyond one state and create continuing relationships and obligations with citizens of another state' are subject to regulation and sanctions in the other State for the consequences of their activities . . . . [W]here the defendant 'deliberately' has engaged in significant activity within a State, or has created 'continuing obligations' between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by 'the benefits and protections' of the forum's law it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.

Id. at 1222 (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475-76 (1985) (internal citations omitted)). The plaintiff bears the burden of coming forward with facts sufficient to establish the existence of minimum contacts. Id. at 1223.

To evaluate the "fair play and substantial justice" prong of the standard for specific personal jurisdiction, a court applies the following "fairness factors": "the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental

substantive social policies." Pennzoil, 149 F.3d at 205-206 (citations omitted). At this point in the analysis, the defendant carries the burden. See Farina, 960 F.2d at 1226 ("[O]nce the plaintiff has made a prima facie case for jurisdiction based upon minimum contacts, the burden falls upon the defendant to show that the assertion of jurisdiction is unconstitutional. This burden is met when the defendant demonstrates to the court that factors are present that make the exercise of jurisdiction unreasonable.") (emphasis in original).

#### B. Venue

"The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C.A. § 1406(a) (West 1993).

A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.

28 U.S.C.A. § 1391(a) (West Supp. 2000). In an analysis under § 1391(a)(2), "[t]he test for determining venue is not the defendant's 'contacts' with a particular district, but rather the

location of those 'events or omissions giving rise to the claim' . . ." Cottman Transmission Systems, Inc., v. Martino, 36 F.3d 291, 294 (3d Cir. 1994). "In assessing whether events or omissions giving rise to the claims are substantial, it is necessary to look at the nature of the dispute." Id. at 295. On a motion to dismiss for improper venue, the movant bears the burden of proving that affirmative defense. Myers v. American Dental Ass'n, 695 F.2d 716, 725 (3d Cir. 1982).

### **III. Discussion**

#### **A. Personal Jurisdiction**

Plaintiff argues that (1) an admission to personal jurisdiction in another suit in the Eastern District of Pennsylvania should bind Defendants in the instant matter<sup>1</sup>; (2) Defendants are subject to general personal jurisdiction in this Court because the "[d]ay to day management in Pennsylvania of

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<sup>1</sup>The Second Amended Complaint in Civil Action No. 00-41 at paragraph 13 alleged:

At all relevant times jurisdiction is proper as the causes of action alleged herein occurred between citizens of different states, and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a), (c). All Defendants are amenable to suit in this jurisdiction since, each, directly and/or through their alter egos and/or instrumentalities, conducts business in the Commonwealth of Pennsylvania or is found in this forum since each has continuous and systematic contacts with this forum."

(Pl. Mem. Ex. G. ¶ 13.)

The Answer stated: "To the extent the allegations of paragraph 13 of the second amended complaint are directed to SLP, SLP admits those allegations. . . ." (Pl. Mem. Ex. H. ¶ 13.)

The Answer used the term "SLP" as a collective reference for defendants Senior Living Properties LLC, SLP Illinois, LLC, and SLP Management, Inc. (Pl. Mem. Ex. H. at unnumbered first page.) Those three entities are the same three entities named as Defendants in this matter.

numerous SNF [skilled nursing facilities] facilities [sic] constitutes continuous and substantial contacts" (Pl. Mem. at 6.); and (3) Defendants are subject to specific personal jurisdiction because Defendants "caused [their] SNFs to be managed in Pennsylvania and refused to pay bills for services when due to [Plaintiff] from the office of [their] agent/manager which operated in Pennsylvania." (Pl. Mem. at 6.)

In support of its argument, Plaintiff submits the affidavit of Regina Ries ("Ries"), in-house counsel for Sun Healthcare Group, Inc., the parent company of Plaintiff. Ries avers: "SLP [Defendants] engaged CCS [Complete Care Services, Inc.] to manage its SNFs from its offices in Horsham, Pennsylvania. Accordingly, during the time when the debt was incurred, on and after January 1, 1999, SLP was regularly conducting the management of its facilities through its agent CCS in Pennsylvania." (Aff. Of Regina Ries attached to Plaintiff's response ("Ries Aff.")). Additionally, Plaintiff submits copies of various documents, including: the second amended complaint in Civil Action No. 00-41; the answer thereto of defendants Senior Living Properties LLC, SLP Illinois, LLC, and SLP Management, Inc.; the Therapy Services Agreement between Plaintiff and Borger Healthcare Center of Borger, Texas; the Texas Management Services Agreement between Senior Living Properties LLC and Complete Care Services, L.P.; and the Illinois Management Services Agreement between Senior

Living Properties LLC and Complete Care Services, L.P.

In support of their argument, Defendants submit the affidavit of James E. Eden ("Eden"), a member of Senior Living Properties, LLC, and chairman of SLP Management, Inc. Eden avers, inter alia:

[Senior Living Properties, LLC]'s former manager of its nursing homes, Complete Care Services, Inc.<sup>2</sup>, maintained bank accounts and certain records for [Senior Living Properties, LLC] in Pennsylvania. These records and accounts are now maintained by a consulting firm in Pennsylvania, which provides cash management services to [Senior Living Properties, LLC]. Other than these cash management records and accounts, [Senior Living Properties, LLC] does not own or lease any property, real or personal, in Pennsylvania. [Defendants] do not sell any products or provide any services, nor do they solicit customers to purchase products or services, in Pennsylvania.

(Eden Aff. ¶ 6.)

Defendants' admission in Civil Action No. 00-41 cannot conclusively establish jurisdiction, either general or specific, in this matter. The admission in Civil Action No. 00-41 merely constitutes evidence in this action that Defendants have contacts with Pennsylvania of a continuous nature.

Plaintiff's argument that Defendants are subject to general

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<sup>2</sup>Neither party addresses the distinction between Complete Care Services, Inc. and Complete Care Services, L.P. Although the Texas and Illinois Management Services Agreements were entered into by Complete Care Services, L.P., the Affidavit of James E. Eden identifies "Complete Care Services, Inc.," as "[Senior Living Properties, LLC]'s former manager of its nursing homes." (Eden Aff. ¶ 6.) While the relationship between Complete Care Services, Inc., and Complete Care Services, L.P., is unclear, it is immaterial for purposes of this Motion, as both are identified as Pennsylvania entities, and Defendants have not argued that the Texas and Illinois Management Services Agreements did not govern the relationship between Defendants and their manager in Pennsylvania.

personal jurisdiction is not persuasive. Plaintiff has failed to adduce meaningful evidence of "continuous and substantial" contacts of Defendants in Pennsylvania. The management activities conducted by Defendants' agent in Pennsylvania simply do not rise to the level of continuous and substantial contacts that would justify subjecting Defendants to suit in Pennsylvania regardless of whether the cause of action had any connection to the Commonwealth. Furthermore, Defendants' admission in Civil Action 00-41 standing alone cannot support the exercise of general jurisdiction in this action. Although Defendants admitted to "continuous and systematic contacts with this forum" when they filed their answer in Civil Action No. 00-41, Plaintiff has submitted no evidence of what activity comprised such "continuous and systematic contacts," and whether such activity was ongoing at the time Plaintiff filed the instant action.

Although the alleged management activity in Pennsylvania on Defendants' behalf and the admission in Civil Action No. 00-41 are insufficient to establish general jurisdiction in this action, they do support the exercise of specific personal jurisdiction over Defendants. As stated above, the admission in Civil Action No. 00-41 constitutes evidence in this action tending to show that Defendants have contacts with Pennsylvania of a continuous nature. Furthermore, the cause of action in Civil Action No. 00-41 is related to the subject matter of the

instant case.<sup>3</sup> The Therapy Services Agreement and Management Services Agreements together present evidence of minimum contacts supporting specific personal jurisdiction. The Therapy Services Agreement between Plaintiff and the Borger Healthcare Center ("Facility") in Texas establishes Defendants' contractual obligation to pay Plaintiff for therapy and related services rendered.<sup>4</sup> (Pl. Mem. Ex. E ¶ 4(a).) The two Management Services Agreements provide that "[Complete Care Services, L.P.]'s accounting department shall . . . provide for the orderly payment of . . . all bills and invoices issued with respect to the Facility as a result of its operations . . . ." (Pl. Mem. Ex. A Att. B ¶ E; Pl. Mem. Ex. B. Att. B ¶ E.) By this provision, Senior Living Properties LLC delegated to Complete Care Services, L.P., a Pennsylvania entity, the performance of the obligation under the Therapy Services Agreement to pay Plaintiff for service. The Management Services Agreements require Complete Care Services, L.P., to provide "a full array of management

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<sup>3</sup>In Civil Action No. 00-41, Complete Care Services, Inc., and other plaintiffs allege that Senior Living Properties LLC, SLP Illinois, LLC, and SLP Management, Inc. (Defendants here) and other parties breached management contracts pursuant to which Complete Care Services, Inc., managed nursing homes in Illinois and Texas on behalf of the defendants in that action. (Pl. Mem. Ex. G.)

<sup>4</sup>Although the Therapy Services Agreement does not expressly name Defendants as parties to the agreement, Defendants have not disputed Plaintiff's assertion that "a form contract designated 'Therapy Services Agreement' was signed by Plaintiff Sundance and each SLP facility in the name of the facility. In all cases, the name of the facility did not represent an entity apart from SLP." (Pl. Mem. at 2 (emphasis in original).) "SLP" is the collective term that Plaintiff uses in its Memorandum of Law Contra Defendants' Motion to Dismiss to refer to the three Defendants.

support personnel and programs to interface with every department within the Facilities . . . " to provide management services to nursing facilities owned by Senior Living Properties LLC. (Pl. Mem. Ex. A. Att. B. ¶ A.; Pl. Mem. Ex. B. Att. B. ¶ A.) The Texas and Illinois Management Services Agreements were both executed and delivered in Pennsylvania. (Pl. Mem. Ex. A ¶ 12(j); Pl. Mem. Ex. B ¶ 12(j).) The Therapy Services Agreement and the Texas and Illinois Management Services Agreements all provide that Pennsylvania law shall govern the agreements. (Pl. Mem. Ex. A. ¶ 12(j); Pl. Mem. Ex. B. ¶ 12(j); Pl. Mem. Ex. E ¶ 13(b).) The documents named, together with Defendants' admission in Civil Action No. 00-41, satisfy Plaintiff's burden of showing by a preponderance of the evidence that Defendants purposefully availed themselves of the privilege of conducting activities within Pennsylvania, invoking the benefits and protections of its laws. Defendants reached out and created continuing obligations between themselves and Complete Care Services, L.P., a Pennsylvania entity. Defendants chose to structure their nursing facility business by locating management in Pennsylvania, thereby establishing a connection to Pennsylvania such that Defendants should reasonably have anticipated being haled into court in the Commonwealth. Plaintiff's cause of action arises from the alleged failure of Defendants, acting through their agent in Pennsylvania, to pay Plaintiff for therapy services rendered;

therefore, Plaintiff has demonstrated the requisite relationship among the forum, Defendants and the litigation. The Court concludes that Plaintiff has adduced facts sufficient to establish that Defendants have minimum contacts with Pennsylvania satisfying the requirements of due process and supporting the exercise of specific personal jurisdiction.

In arguing that they lack minimum contacts, Defendants assert that "the purported contracts were performed, or to be performed, in Illinois or Texas." (Def. Reply Brief at unnumbered first page.) This assertion ignores that (1) the Therapy Services Agreement does not specify where performance of the obligation to pay will take place; and (2) the evidence adduced by Plaintiff shows that Defendants delegated the obligation to pay Plaintiff to Complete Care Services, a Pennsylvania entity. With respect to performance of the contracts of which Plaintiff in this action alleges breach - that is, performance of the obligation to pay for service - Complete Care Services, L.P. was the alter ego of Defendants and gives Defendants a presence and appropriate level of activity in Pennsylvania that forms the basis for specific personal jurisdiction.

Next the Court determines whether considerations of fair play and substantial justice should prevent the Court from exercising personal jurisdiction over Defendants. Defendants argue that "[u]nder no set of circumstances can Pennsylvania be

said to have any interest in litigating this dispute." (Def. Mem. at 5; Def. Reply Brief at 2.) As a basis for this argument, Defendants assert that "the purported contracts at issue were between non-Pennsylvania residents, and were to be performed outside of Pennsylvania." (Def. Mem. at 5; Def. Reply Brief at 2.) As discussed above, Defendants ignore the evidence that Senior Living Properties LLC engaged Complete Care Services, L.P., a Pennsylvania entity, to manage the skilled nursing facilities, and by contract entered into in Pennsylvania delegated to Complete Care Services, L.P., the performance of Defendants' obligation to pay Plaintiff. Pennsylvania has an interest in adjudicating a claim for breach of a contract between non-Pennsylvania parties, the performance of which had been delegated to a Pennsylvania entity by means of an agreement entered into in Pennsylvania and governed by Pennsylvania law.

Defendants do not address the remaining fairness factors, and Plaintiff addresses none of the fairness factors. The Court cannot conclude that any of the fairness factors requires the Court to refrain from exercising personal jurisdiction over Defendants.

#### **B. Venue**

Plaintiff argues that venue is proper pursuant to § 1391(a)(2) because "the managerial decisions concerning payment and nonpayment of claims and expenses took place in Horsham,

Montgomery County, Pennsylvania . . .” and “[a]ll collected funds were delivered to and disbursed from this district.” (Pl. Mem. at 7.) Defendants reply that the contracts allegedly breached were “entered into between non-Pennsylvania residents” and were “for services to be rendered in Illinois or Texas.” (Def. Reply Brief at unnumbered fifth page.) From these facts, Defendants argue that “[a] substantial part of the events or omissions giving rise to Plaintiff’s claim may have occurred in those states, but not Pennsylvania.” (*Id.*) This argument ignores that performance by Defendants - that is, payment of money owed for therapy services rendered by Plaintiff - was not specifically to take place in Illinois or Texas under the Therapy Services Agreement, and rather that Senior Living Properties LLC delegated this obligation to Complete Care Services, L.P., a Pennsylvania entity. The omission giving rise to Plaintiff’s claim in this action is the alleged omission to pay by Complete Care Services, L.P., in Horsham, Pennsylvania. As the site of the alleged omission giving rise to the cause of action, the Eastern District of Pennsylvania is an appropriate venue for this action pursuant to 28 U.S.C. § 1392(a)(2).

#### **IV. Conclusion**

Having determined that the exercise of personal jurisdiction over Defendants is consistent with the requirements of due process, and that the Eastern District of Pennsylvania is an

appropriate venue for this action, the Court denies Defendants' Motion to Dismiss. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SUNDANCE REHABILITATION CORPORATION,	:	CIVIL ACTION
Plaintiff,	:	NO. 00-5217
	:	
v.	:	
	:	
SENIOR LIVING PROPERTIES, LLC;	:	
SLP ILLINOIS, LLC; and	:	
SLP MANAGEMENT, INC.,	:	
Defendants.	:	

O R D E R

**AND NOW**, this                    day of June, 2001, upon consideration of Defendants' Motion to Dismiss (Doc. No. 5), Plaintiff's response thereto (Doc. No. 10), and Defendants' reply thereto (Doc. No. 11), **IT IS HEREBY ORDERED** that Defendants' Motion is **DENIED**.

BY THE COURT:

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John R. Padova, J.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SUNDANCE REHABILITATION CORPORATION,	:	CIVIL ACTION
Plaintiff,	:	NO. 00-5217
	:	
v.	:	
	:	
SENIOR LIVING PROPERTIES, LLC;	:	
SLP ILLINOIS, LLC; and	:	
SLP MANAGEMENT, INC.,	:	
Defendants.	:	

O R D E R

**AND NOW**, this                    day of June, 2001, **IT IS HEREBY ORDERED** that Defendants' Motion for Leave to File Reply Brief (Doc. No. 11) is **GRANTED**.

BY THE COURT:

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John R. Padova, J.