

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>IN RE: BLUE CROSS BLUE SHIELD</b>	}	<b>Master File No.: 2:13-CV-20000-RDP</b>
	}	
<b>ANTITRUST LITIGATION</b>	}	<b>This document relates to all cases.</b>
<b>(MDL NO.: 2406)</b>	}	
	}	

**ORDER**

This matter is before the court on various Supplemental Motions to Dismiss filed by certain Defendants challenging *in personam* jurisdiction and venue, a matter left open by the court's prior ruling on Defendants' earlier Motions to Dismiss. (Case No. 2:13-CV-20000-RDP, MDL 2406, Docs. # 249, 251, 256, 258, 280, 313, and 314; Case No. 2:12-cv-02169-RDP Doc. # 198; Case No. 2:12-cv-02532-RDP Docs. # 296, 301, and 320; Case No. 2:12-cv-04169-RDP Doc. # 122). The Motions have been fully briefed, and on May 19, 2015, the court heard additional argument on the Motions.

The moving Defendants<sup>1</sup> contend that, in *Conway, et al. v. Blue Cross and Blue Shield of Alabama, et al.*, Case No. 2:12-cv-02532 and *American Electric Motor Services, Inc., et al. v. Blue Cross Blue Shield of Alabama, et al.*, Case No. 2:12-cv-02169, and in *Cerven, et al. v. Blue Cross Blue Shield of North Carolina, et al.*, Case No. 2:12-cv-04169,<sup>2</sup> dismissal is warranted as to them pursuant to Rules 12(b)(2) and 12(b)(3) of the Federal Rules of Civil Procedure because (1) this court lacks personal jurisdiction over the moving Defendants in *Conway* and *American Electric*, and (2) the Western District of North Carolina (the transferor court) lacks personal

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<sup>1</sup> The court uses the term "moving Defendants" intentionally. It is not lost on the court that the vast majority of the Blues have *not* challenged *in personam* jurisdiction or venue in these cases.

<sup>2</sup> *Cerven* was transferred to this court by the Judicial Panel on Multidistrict Litigation. (Doc. # 1-1). *Conway* and *American Electric* were directly filed in this court.

jurisdiction over the moving Defendants in *Cerven*. The moving Defendants also contend that venue is improper in both courts.

Ordinarily, a motion challenging *in personam* jurisdiction and venue should be addressed very early in the litigation. Here, however, the court notes that additional cases were recently filed against the moving Defendants' in their home jurisdictions, and those cases have been transferred to this court by the Judicial Panel for Multidistrict Litigation.<sup>3</sup> (Docs. # 352, 361). Therefore, whether it is in *Conway*, *American Electric*, and *Cerven*, or in these recently transferred actions, these Defendants will be participating in pre-trial proceedings in this court regardless of the outcome of these motions to dismiss.<sup>4</sup>

Moreover, at oral argument on the Motions, it became readily apparent that, at this time, the current record is simply inadequate to make an appropriate ruling on these motions. Moving Defendants have argued that Plaintiffs bear the burden of presenting facts establishing both personal jurisdiction and venue in response to their Motions, but have failed to carry their respective burdens. On the other hand, Plaintiffs contend that Defendants have resisted jurisdictional discovery. And, as the court noted at the hearing, only some of the moving Defendants provided information about their contacts with and/or activities in Alabama and North Carolina. Even a quick review of the record, however, shows that the information which has been provided by most of the moving Defendants does not address the extent to which they

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<sup>3</sup> Case No. 2:15-cv-00574-RDP *Galactic Funk Touring Inc., et al v. Blue Cross and Blue Shield of Arizona Inc.*; Case No. 2:15-cv-00575-RDP *Galactic Funk Touring, Inc. et al. v. Blue Cross Blue Shield of Kansas*; Case No. 2:15-cv-00576-RDP *Galactic Funk Touring, Inc., et al. v. Blue Shield of Northeastern New York, et al.*; Case No. 2:15-cv-00577-RDP *Galactic Funk Touring, Inc. et al. v. Noridian Mutual Insurance Company*; Case No. 2:15-cv-00578-RDP *Galactic Funk Touring, Inc. et al. v. Capital Blue Cross, et al.*; 2:15-cv-00701-RDP *Galactic Funk Touring Inc. et al. v. Tripel S Salud*. (Docs. # 352, 361).

<sup>4</sup> As the court stated at the May 19<sup>th</sup> hearing, due to the “luxury” of the MDL process, “there is no magic bullet that gets these Defendants home.” And, at least to some degree, time is not slipping away and these Defendants are not being held captive here.

transacted business in the Northern District of Alabama and the Western District of North Carolina (where these cases were originally filed). Thus, the limited information provided by Defendants in support of their motions is incomplete as it relates to the court's current inquiry.

Due to the need to develop a more complete record on these issues, and as more fully discussed on the record at the May 19, 2015 hearing, the court concludes that Plaintiffs are entitled to conduct jurisdictional discovery. *See, e.g., Internet Solutions Corp. v. Marshall*, 557 F.3d 1293, 1295 (11th Cir. 2009); *Eaton v. Dorchester Dev., Inc.*, 692 F.2d 727, 730-31 (11th Cir. 1982) (recognizing a qualified right to jurisdictional discovery in the Eleventh Circuit).

Accordingly, Defendants' Supplemental Motions to Dismiss (Case No. 2:13-CV-20000-RDP, MDL 2406, Docs. # 249, 251, 256, 258, 280, 313, and 314; Case No. 2:12-cv-02169-RDP Doc. # 198; Case No. 2:12-cv-02532-RDP Docs. # 296, 301, and 320; Case No. 2:12-cv-04169-RDP Doc. # 122) are due to be and hereby are **DENIED WITHOUT PREJUDICE**. The moving Defendants may renew those motions after jurisdictional discovery is complete, *if* there is a basis for dismissal under Rules 12(b)(2) and/or (3).

The parties are **DIRECTED** to work with Judge Putnam to develop a discovery plan which will allow for jurisdictional discovery.

**DONE** and **ORDERED** this May 26, 2015.

  
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**R. DAVID PROCTOR**  
UNITED STATES DISTRICT JUDGE