STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Bettina Honeycutt, Francisco Gilmore, and Jennifer Colburn, individually and on behalf of all others similarly situated, Plaintiffs, vs. Broad River Physicians Group, LLC and Medlytix, LLC, Defendants.	IN THE COURT OF COMMON PLEAS C.A. NO. 2024-CP-10-04598

ORDER DENYING DEFENDANT BROAD RIVER PHYSICIANS GROUP, LLC'S MOTION TO COMPEL INDIVIDUAL ARBITRATION

This matter came before me on August 5, 2025, on Broad River Physicians Group, LLC's ("Broad River") Motion to Compel Individual Arbitration. This matter was submitted for consideration with oral argument and filing of briefs by counsel for Broad River and Plaintiffs Bettina Honeycutt, Francisco Gilmore, and Jennifer Colburn (collectively "Plaintiffs"). The Court has reviewed arguments, the briefing, and the record herein, is fully informed, and denies Broad River's Motion to Compel Individual Arbitration based upon the following:

BACKGROUND

Plaintiffs filed this putative class action against Defendants Broad River and Medlytix, LLC ("Medlytix") (collectively "Defendants"). Plaintiffs allege that they each had valid health insurance coverage through Blue Cross Blue Shield of South Carolina or one of its affiliates ("BCBSSC") at the time they sought emergency treatment following their own individual car accidents. Complaint ¶¶ 25, 52, and 59. Plaintiffs further allege that, after receiving said emergency treatment, Defendants circumvented Plaintiffs' BCBSSC contractual benefits by directly

submitting claims to Plaintiffs and/or automobile insurance carriers they suspect have coverage obligations arising from Plaintiffs' car accidents in an effort to collect charges for medical treatment at rates higher than the pre-negotiated contractual rates set by BCBSSC. Complaint ¶ 23. Plaintiffs have brought this action on their own behalf and on behalf of a proposed class of South Carolina citizens who, since August 1, 2021, received any type of healthcare treatment from Broad River while being covered by valid health insurance through BSBSSC or one of its affiliates, and whose medical bills resulting from that treatment were not submitted to BCBSSC or one of its affiliates for payment. Complaint ¶ 65.

STANDARD OF REVIEW

Arbitration is a matter of contract law and is available only when the parties involved contractually agreed to arbitrate. *Lucey v. Meyer*, 401 S.C. 122, 139, 736 S.E.2d 274, 283 (Ct. App. 2012). To compel arbitration under the South Carolina Uniform Arbitration Act (the "UAA"), a party must establish the existence of a written agreement to arbitrate between the parties. S.C. Code Ann. § 15–48–20(a). Arbitration will be denied if a court determines no agreement to arbitrate exists. *Lucey*, 401 S.C. at 139, 736 S.E.2d at 283. In determining whether an agreement to arbitrate exists, "the court should apply ordinary state-law principles that govern the formation of contracts." *Towles v. United HealthCare Corp.*, 338 S.C. 29, 37, 524 S.E.2d 839, 844 (Ct. App. 1999) (internal quotations omitted).

The question of the arbitrability of a claim is an issue for judicial determination unless the parties provide otherwise. *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001). Whether an arbitration agreement may be enforced against nonsignatories, and under what circumstances, is an issue controlled by state law. *Wilson v. Willis*, 426 S.C. 326, 338, 827 S.E.2d 167, 173–74 (2019). There is no presumption in favor of arbitration applied to questions

concerning the identity of the parties who may be bound by an arbitration agreement. Rather, "because arbitration, while favored, exists solely by agreement of the parties, a presumption *against* arbitration arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate." *Id.* at 337–38, 827 S.E.2d at 173. (Emphasis in original).

ANALYSIS

I. The arbitration provisions do not apply to Plaintiffs' claims.

The Court finds that Plaintiffs' claims are not subject to arbitration because the arbitration provisions do not apply to coverage disputes. Broad River and BCBSSC are parties to one or more provider agreements (the "Provider Agreements"), incorporated by reference in the Complaint and attached as exhibits to Broad River's motion. The Provider Agreements state:

> Preferred Provider shall:
>
> (1) Accept Payment of the Fee Allowance amount as payment in full for Covered Services rendered to Members. All payments are subject to the terms of the Member's Benefits Contract. Member shall be solely responsible for any required Patient Pay Amounts and Preferred Provider shall not bill the Member any amount in excess of such Patient Pay Amounts for Covered Services. …
>
> (4) Cooperate and comply with the Provider Office Administrative Manual. …
>
> (7) Cooperate fully with the Utilization Management Program. …
>
> (9) Cooperate and participate with BCBSSC and any Associate Plan in any utilization control procedures, quality assurance activities, external audit systems and grievance procedures, as may be established pursuant to the terms of the Benefits Contract, and comply with all final determinations rendered through the peer review process or grievance mechanism. …
>
> (11) File a claim for all Covered Services rendered to Members within the time frame set forth in the Benefits Contract (typically 180 days).

Provider Agreements, Article IV(A). The arbitration provisions in the Provider Agreements expressly exclude from their scope decisions made pursuant to the Utilization Management Program, a separate dispute resolution process applicable to coverage decisions. Provider

Agreements, Art. IX(M), Appendix A. The Court finds that the express language of Art. IX(M) and the Utilization Management Program dispute resolution procedures governed by Appendix A indicate a clear intent by Broad River and BCBSSC to exclude coverage decisions from the scope of arbitration under Art. IX(M).

The Court further finds that Plaintiffs' claims stem from coverage disputes between Plaintiffs and Broad River. Plaintiffs allege that they each had valid health insurance coverage through BCBSSC at the time they sought emergency treatment with Broad River. Complaint ¶¶ 25, 52, and 59. BCBSSC's benefit policies, such as the 2024 BlueEssentials Benefits Policy (the "Benefits Policy") attached as Exhibit 1 to Plaintiffs' response in opposition, set forth the terms and conditions of its members' coverage. Under the Benefits Policy, emergency services are covered services that are required "essential health benefits." *Id*. at p. 19, BlueEssentials Outline of Coverage, p. 19 and 21. As essential health benefits, benefits for emergency services provided by an in-Network Provider, like Broad River are covered as any other in-Network service under BCBSSC's policies. *Id*. at p. 23. Members have the right under the Benefits Policy to appeal adverse coverage decisions through the Utilization Management Program and, if necessary, through litigation. Benefits Policy, p. 48-50; *see also* Group Preferred Provider Agreement, Appendix A.

Plaintiffs allege that Broad River improperly decided that Plaintiffs' claims were not covered under the Benefits Policy to justify not submitting their claims to BCBSSC and avoid application of the discounted reimbursement rates required by the Provider Agreements. Complaint ¶¶ 20, 23. Because Plaintiffs' claims present coverage disputes between themselves and Broad River, and given the clear intent of the parties to the Provider Agreements for coverage disputes to be excluded from arbitration, the Court finds that Plaintiffs' claims are not subject to

arbitration under Art. IX(M), notwithstanding Broad River's failure to submit Plaintiffs' claims for processing and formal dispute resolution under the Utilization Management Program.

Moreover, Plaintiff Honeycutt's breach of contract claim is brought on her own behalf based on her coverage with Anthem Blue Cross Blue Shield, a BCBSSC affiliate, and on behalf of a class that includes individuals covered by valid health insurance through one of BCBSSC's affiliates. Complaint ¶¶ 25, 65. The Group Preferred Provider Agreement between Broad River and BCBSSC defines an "Associate Plan" as:

> a company, organization or other entity that has a health plan or other program . . . who has made arrangements with BCBSSC to access and utilize Network Providers in connection with such health plans or programs. . . .. Associate Plan also includes BCBSSC's subsidiaries and affiliates that access this agreement.

Group Preferred Provider Agreement, Article II(B). Similarly, Article II(B) of the HIX Preferred Provider Agreement defines an "Associate Plan" as "a company, organization or other entity that is entitled to the benefit of the terms of this Agreement as a result of such Associate Plan's entry into an agreement with BCBSSC. The term 'Associate Plan' also includes BCBSSC subsidiaries and other members of the Blue Cross Blue Shield Association." Under these applicable definitions, Plaintiffs' proposed class includes individuals covered by valid health insurance issued by an Associate Plan. For purposes of the allegations in support of their breach of contract claim, Plaintiff Honeycutt and these individuals are the intended third-party beneficiaries of the agreements between Broad River and Associate Plans as provided for in Article VII(B), Assignment of Covered Services.

Per the plain terms of the assignment of covered services provision, references to BCBSSC in Article IX, including references in the arbitration provisions at issue, shall not be deemed references to Associate Plans when determining the Associate Plans' duties and obligations under the Provider Agreements with respect to Associate Plan members. *See*, Provider Agreements,

Article VII(B). Because the arbitration provision does not otherwise state that Associate Plans have agreed to arbitrate any disputes that may arise under the Provider Agreements with respect to Associate Plan members, the Court finds that the breach of contract claims brought by Plaintiff Honeycutt individually and on behalf of class members covered by an Associate Plan fall outside the scope of the arbitration provision.

II. Broad River is not entitled to invoke equitable estoppel against Plaintiffs.

The Court further finds it would be inequitable to allow Broad River to benefit from its alleged bad conduct by requiring arbitration of claims. The principle of equitable estoppel is founded on right conduct and fair dealing. *Premium Inv. Corp. v. Green*, 283 S.C. 464, 473, 324 S.E.2d 72, 77–78 (Ct. App. 1984). "Equitable estoppel is raised on appropriate facts to prevent an injustice to the party invoking the doctrine, not to penalize or to punish the other for an act or omission which has not resulted in harm to his adversary." *Harvey v. Art Metal, Inc.*, 247 S.C. 443, 449, 147 S.E.2d 697, 701 (1966). As such, it "is more properly viewed as a shield to prevent injustice rather than a sword to compel arbitration" and should be used "sparingly." *Wilson*, 426 S.C. at 345, 827 S.E.2d at 177 (quoting *Hirsch v. Amper Fin. Servs.*, LLC, 215 N.J. 174, 71 A.3d 849, 852 (2013)).

Plaintiffs allege that they sought emergency medical treatment from Broad River following their own individual car accidents. Complaint ¶ 23. Plaintiffs further allege that, following these incidents, Defendants schemed to (1) falsely assert that Plaintiffs' health insurance plans do not cover the emergency care provided by Broad River, (2) subvert, undermine, prevent, divert, or otherwise interfere with payments, contractual adjustments, and/or other contractual benefits with respect to medical bills from Broad River that Plaintiffs were entitled to through their health insurance policies with BCBSSC, and/or (3) circumvent Plaintiffs' BCBSSC contractual benefits

by directly submitting claims to Plaintiffs and/or automobile insurance carriers they suspect have coverage obligations arising from Plaintiffs' car accidents, all in an effort to collect from potential automobile insurance claim settlements charges for medical treatment at rates higher than the pre-negotiated contractual rates set forth by BCBSSC. *Id.*

It is a "well known principle that one who has acted fraudulently in the premises cannot avoid the effects of his fraudulent conduct by hiding behind the screen of a plea of estoppel." *Parker Peanut Co. v. Felder*, 200 S.C. 203, 20 S.E.2d 716, 724 (1942). Applying this principle in the present context, the Court finds it would be inequitable to allow Broad River to benefit from its conduct by requiring arbitration of Plaintiffs' claims, where Plaintiffs would have been entitled by the Benefits Policy to litigate any adverse coverage decision had Broad River submitted the bills to BCBSSC. Further, the Court finds that applying equitable estoppel to require arbitration of Plaintiffs' claims would not prevent any injustice to Broad River, but would instead cause injustice to Plaintiffs by allowing Defendants to deny patients the benefits of their health insurance coverage and then force them to arbitrate disputes that the Benefits Policy contractually entitles them to resolve via judicial action. *See, Wilson*, 426 S.C. at 342, 827 S.E.2d at 176. Moreover, Broad River does not claim – and there is no evidence in the record indicating – that it was misled by Plaintiffs or that Plaintiffs have otherwise acted inequitably. *Weaver*, 431 S.C. at 233, 847 S.E.2d at 274.

"[E]stoppel is an equitable doctrine, essentially flexible, and therefore to be applied or denied as equities between the parties may preponderate." *Quail Hill, LLC v. Cnty. of Richland*, 379 S.C. 314, 324, 665 S.E.2d 194, 199 (Ct. App. 2008), *aff'd in part, rev'd in part,* 387 S.C. 223, 692 S.E.2d 499 (2010) (quoting *Pitts v. N.Y. Life Ins. Co.,* 247 S.C. 545, 552, 148 S.E.2d 369, 372 (1966)). Based on the foregoing, the Court finds that the equities between the parties demand that Broad River's attempt to force this matter to arbitration be denied.

III. Direct benefits estoppel does not compel arbitration of Plaintiffs' claims.

The Court also finds that direct benefits estoppel does not compel arbitration of Plaintiffs' claims pursuant to the Provider Agreements' arbitration provisions. Under the direct benefits theory of estoppel, a nonsignatory may be compelled to arbitrate if "(1) the nonsigner's claim arises from the contractual relationship, (2) the nonsigner has 'exploited' other parts of the contract by reaping its benefits, and (3) the claim relies solely on the contract terms to impose liability." *Blackwell v. Mary Black Health Sys., LLC*, 445 S.C. 62, 73–74, 911 S.E.2d 147, 153 (Ct. App. 2024), *reh'g denied* (Jan. 27, 2025), *cert. granted* (June 25, 2025) (internal quotation omitted). However, "when the substance of the claim arises from general obligations imposed by state law, including statutes, torts and other common law duties, or federal law, direct-benefits estoppel is not implicated even if the claim refers to or relates to the contract *or would not have arisen 'but for' the contract's existence*." *Wilson*, 426 S.C. at 343, 827 S.E.2d at 176 (internal quotations omitted) (emphasis in original).

Direct benefits estoppel does not compel arbitration of Plaintiffs claims for breach of contract, negligence, unjust enrichment, declaratory judgment, and injunctive relief, because (1) Plaintiffs have yet to receive any direct benefits under the Provider Agreements, (2) the majority of Plaintiffs' claims arise from common law, state or federal statutes, or their own Benefit Policies, and (3) none of Plaintiffs' claims rely solely on the terms of the Provider Agreements to impose liability.

Plaintiffs' breach of contract claim alleges that they are intended third-party beneficiaries of the Provider Agreements that Broad River breached. Complaint ¶ 77. However, Plaintiffs do not allege that they have received any direct benefits from the Provider Agreements. *Compare Bennett*, 444 S.C. at 474, 908 S.E.2d at 118 (plaintiffs were estopped from avoiding arbitration where they

alleged that they had received direct benefits from the provider agreements) with *Blackwell*, 445 S.C. at 75, 911 S.E.2d at 154 (refusing to apply equitable estoppel in the arbitration context where plaintiff did not allege that he had received a direct benefit from the provider agreement). Further, the Court finds that Plaintiffs' breach of contract claim is at its heart a coverage dispute predicated on Broad River's alleged misconduct in refusing to submit Plaintiffs' medical bills to BCBSSC for claims processing. Because the terms of the Provider Agreements unambiguously state that this type of dispute is subject to the Utilization Management Program and expressly excluded from the scope of the arbitration provision, principles of equity demand that Broad River be precluded from invoking equitable estoppel to compel arbitration of this claim.

The Court further finds that equitable estoppel does not apply to require arbitration of Plaintiffs' negligence and unjust enrichment claims because those claims do not arise from Plaintiffs' status as third-party beneficiaries to the Provider Agreements, and neither relies solely on the Provider Agreements to impose liability. *See Bennett*, 444 S.C. at 471–73, 908 S.E.2d at 117-18 (applying equitable estoppel where plaintiffs pled all of their claims as being based on an alleged duty arising "solely" from the terms of a provider agreement). Plaintiffs allege in the Complaint that their claims present common legal and factual issues related to Broad River's alleged breaches of its common law and statutory duties to Plaintiffs as its patients. Complaint ¶ 67.

Here, Plaintiffs' negligence claim alleges that Defendants owe common law and statutory duties to Plaintiffs as Broad Rivers' patients, including the duty to assess and execute medical billing in a manner consistent with the law and consistent with the interests of the patients. Complaint ¶¶ 90-91. Plaintiffs allege Defendants breached these duties by structuring, directing, and sequencing the medical billing to attempt to maximize profits for themselves, while at the

same time acting with a careless, intentional, or reckless disregard for the patients' interests. *Id.* ¶ 92. Plaintiffs further allege Defendants breached these duties by, among other things, manufacturing delinquencies in payment that end up in collections, costing patients money and forcing patients to suffer through unnecessary debt collection efforts; billing contrary to personal health insurance information collected by and known to Defendants; and balance billing for emergency and other services rendered. *Id.* ¶ 93. Plaintiffs allege that as a direct and proximate result of Defendants' actions, Plaintiffs and proposed class members paid more for healthcare services than they would have if Defendants had correctly submitted the bills in accordance with their duties. *Id.* ¶ 94. Based on the foregoing, the Court finds that Plaintiffs' negligence claim is premised on duties that arise under South Carolina law and Plaintiffs' own benefits policies, not the Provider Agreements, and can be determined in reference to Plaintiffs' benefit policies. *See Blackwell*, 445 S.C. at 77, 911 S.E.2d at 154-55. The Court thus finds that direct benefits estoppel does not require arbitration of Plaintiffs' negligence claim.

The Court also finds that direct benefits estoppel does not apply to Plaintiffs' claim for unjust enrichment. Plaintiffs' unjust enrichment claim alleges that Defendants have unjustly enriched themselves by engaging in a pattern of subverting the financial interests and contractual rights of Plaintiffs and Class members for their own pecuniary gain. Complaint ¶ 97. As to Broad River's alleged interference with the contractual benefits afforded to Plaintiffs through their benefit policies, Plaintiffs allege that Broad River "interfered with the contractual benefits due Class members under their contracts with BCBS" and profited off of their fraudulent billing scheme "by refusing to submit bills directly to BCBS for services rendered to patients who are covered by BCBS health insurance." *Id.* ¶ 67. Plaintiffs allege they conferred a non-gratuitous benefit on Defendants in the form of higher payments for healthcare services than they would have paid if

the bills had been submitted for payment through Plaintiffs' health insurance plans, Defendants realized the benefit of these higher payments, and as a matter of equity, it would be unjust to allow Defendants to retain the monies in the absence of a corresponding benefit to Plaintiffs. *Id.* ¶¶ 97-99. Because the substance of this claim arises from common and/or statutory law, and can be determined in reference to Plaintiffs' benefit policies, the Court finds that direct benefits estoppel does not require arbitration of Plaintiffs' claim for unjust enrichment. *See Blackwell*, 445 S.C. at 77, 911 S.E.2d at 154-55.

The Court further finds that Plaintiffs' claims for declaratory and injunctive relief arise under both their own benefits policies and the Provider Agreements, as issues related to covered services, applicable patient co-pays or deductibles, and reimbursement rates necessarily implicate both agreements. Accordingly, the Court finds that only a portion of Plaintiffs' claims against Broad River look to the Provider Agreements, and none rely solely on the Provider Agreements to impose liability. Given the considerations of equity discussed above and the fact that the Provider Agreements do not give rise to the full spectrum of claims, the Court finds that equitable estoppel should not be applied to compel arbitration of Plaintiffs' claims under the arbitration clauses in the Provider Agreements. *Blackwell*, 445 S.C. at 77, 911 S.E.2d at 155.

III. Broad River waived any arbitration rights it may have had.

Finally, the Court finds that Broad River knowingly relinquished any rights it may have had to compel arbitration of Plaintiffs' claims when it voluntarily and expressly indicated its desire to litigate this matter in federal court and then delayed requesting arbitration until after the federal court refused to exercise jurisdiction, essentially enabling it to "test the water before taking the swim." *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 666, 521 S.E.2d 749, 753–54 (Ct. App. 1999) (citation omitted).

An arbitration contract is like any other contract: if it exists, it will be enforced according to its terms. *Lampo v. Amedisys Holding*, LLC, 445 S.C. 305, 317, 914 S.E.2d 139, 146 (2025). And like any other contract, an arbitration contract is subject to the general rule that acts inconsistent with the continued assertion of a right may constitute waiver. *Hyload, Inc. v. Pre-Engineered Prods., Inc.*, 308 S.C. 277, 280, 417 S.E.2d 622, 624 (Ct. App. 1992). Moreover, a party seeking to establish waiver in the arbitration context is not required to show any prejudice resulting from a delay in the demand for arbitration. *See*, *Morgan v. Sundance, Inc.*, 596 U.S. 411, 417-18, 142 S. Ct. 1708, 1712–13, 212 L. Ed. 2d 753 (2022) (striking down an arbitration-specific rule conditioning waiver on a showing of prejudice because "a court may not devise novel rules to favor arbitration over litigation."); *Lampo*, 445 S.C. at 317, 914 S.E.2d at 146 (characterizing the decision in Morgan as the Supreme Court "unanimously rebuking the Eighth Circuit for creating 'arbitration-specific variants of federal procedural rules' based on the incorrect notion of a 'policy favoring arbitration.'").

Therefore, "waiver in the arbitration context, like waiver generally, is simply 'the intentional relinquishment or abandonment of a known right.'" *SZY Holdings, LLC v. Garcia*, No. 23-1305, 2024 WL 3983944, at *2–3 (4th Cir. Aug. 29, 2024) (quoting *Morgan*, 596 U.S. at 419). The relevant question for this Court, then, is whether Broad River waived whatever arbitration rights it may have had in this case through affirmative conduct inconsistent with those rights. *Maldini v. Marriott Int'l, Inc.*, 140 F.4th 123, 131 (4th Cir. 2025).

The Court finds that Broad River waived its right to arbitration by voluntarily availing itself of the federal judicial forum. Ordinarily, bringing a suit based on the contract instead of relying on the arbitration provision constitutes a waiver of the right to arbitrate. *Hyload*, 308 S.C. at 280, 417 S.E.2d at 624. When a party removes a case to federal district court without at the same time asking

the district court for an order compelling arbitration, it "manifest[s] an intention to resolve the dispute through the processes of the federal court." *Cabinetree of Wisconsin, Inc. v. Kraftmaid Cabinetry, Inc.*, 50 F.3d 388, 390 (7th Cir. 1995). Broad River engaged in affirmative conduct by consenting to the Medlytix's removal after Plaintiffs had already moved for remand based on Medlytix's failure to timely obtain Broad River's consent, a fatal procedural defect that required remand, and by intentionally sitting on its right to request arbitration until after the federal court foreclosed its ability to resolve this case in a federal judicial forum. *Hyload*, 308 S.C. at 280, 417 S.E.2d at 624. The Court therefore finds that Broad River waived its right to compel arbitration in this case.

Given the foregoing, Broad River's Motion to Compel Individual Arbitration is **DENIED**.

IT IS SO ORDERED this _____ day of _____, 2025.

_____
The Honorable Benjamin H. Culbertson
Assigned Circuit Court Judge

Charleston Common Pleas

Case Caption: Bettina Honeycutt , plaintiff, et al VS Broad River Physicians Group, Llc , defendant, et al

Case Number: 2024CP1004598

Type: Order/Compel

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148