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

NEWSPRING MEZ CAPITAL II, L.P.,	ZANINE	:	CIVIL ACTION
, ,	Plaintiff,	:	
		:	No. 14-1706
	v.	:	
		:	
HAYES, JR. et al.,		:	
	Defendants.	:	

ORDER

This 12th day of November, 2014, Defendant Utilipath, LLC's Motion to Dismiss Counts I, II, III, IV, and V of Baxter McLindon Hayes, Jr.'s and Utilipath Holdings, Inc.'s Amended Cross-claim is **DENIED** for the reasons that follow:

- With respect to Count I, taking the allegations of the Cross-claim Complaint collectively, Claimaints have sufficiently pleaded a Rule 10b-5 claim. *Tellabs v. Makor Issues & Rights, Ltd.* 551 U.S. 308, 323–24 (2007).
- With respect to Count II, regardless of whether Pennsylvania or Delaware law applies, which I am not deciding, the allegations suffice to plead fraudulent inducement and reliance.
- 3) With respect to Count IV, although the adequacy of the Cross-claim is a closer issue under *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), it is sufficient to withstand dismissal.
- With respect to Counts III and V, the basis for denial of the Motion, without prejudice, is set forth in the accompanying Memorandum.

/s/ Gerald Austin McHugh United States District Court Judge