

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

HIGHMARK WEST VIRGINIA INC.,

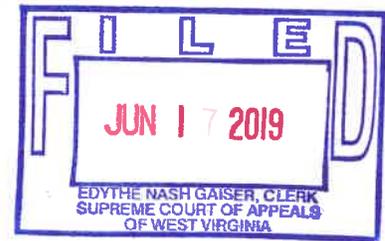
Plaintiff

v.

CIVIL ACTION NO. 18-C-271
(Wood County; Judge Waters)

MEDTEST LABORATORIES, LLC,
BRICE AND/OR BILLY TAYLOR, MUHAMMAD
AMJAD, PH. D., MICHAEL CHEN, PH. D.,
JAMES TAYLOR, and VITAS LABORATORY LLC,

Defendants.



MEDTEST LABORATORIES, LLC,

Counterclaim-Plaintiff

v.

HIGHMARK WEST VIRGINIA INC., et al.,

Counterclaim and Third-Party Defendants.

**PLAINTIFF HIGHMARK WEST VIRGINIA INC.'S
MOTION TO REFER ACTION TO THE BUSINESS COURT DIVISION**

Pursuant to *West Virginia Trial Court Rules* 29.04 and 29.06, plaintiff Highmark West Virginia Inc. (“Highmark WV”), by counsel, hereby moves for an order referring this civil action to the Business Court Division for all further proceedings and trial. This request should be granted because this action (a) centers on a significant commercial dispute over millions of dollars, (b) involves several parties who are sophisticated commercial entities, including forty-six healthcare insurers who were named as Third-Party Defendants, and (c) requires the Division’s

specialized knowledge and expertise in contract law and interpretation, healthcare billing and reimbursement, fraudulent schemes and conspiracies, and limited liability company veil piercing.

BACKGROUND

Plaintiff Highmark WV, a healthcare insurer, alleges in part that Defendants¹ collaborated to carry out a fraudulent healthcare billing scheme. As part of the scheme, Defendants operated a sham laboratory to infiltrate Highmark WV's insurance network; submitted false and misleading insurance reimbursement claims for services the laboratory did not perform; and secured millions of dollars unlawfully. *See* Complaint, Civil Action No. 18-C-271 (Oct. 5, 2018) (attached).

Discovery and trial will focus on, among other issues:

- The laboratory's obligations to Highmark WV under law, contract, and policy;
- The business of healthcare, particularly insurance reimbursement for services rendered;
- The billing codes utilized by healthcare providers and insurers, and the interplay between the contracts, policies, and procedures governing billing and reimbursement;
- Limited liability company veil piercing for, among other things, fraud, comingling of funds, and failing to observe corporate formalities and legal requirements;
- Fraudulent civil conspiracies, alter-ego liability, and joint venture liability; and
- Forensic accounting issues relating to Highmark WV's damages.

¹ Highmark WV named the following Defendants in the Complaint: MedTest Laboratories, LLC; Brice Taylor; Billy Taylor; Muhammad Amjad, Ph. D.; Michael Chen, Ph. D.; James Taylor; and Vitas Laboratory LLC.

Highmark WV notes that Judge Waters—the presiding trial court judge—observed at a recent hearing that this action “may be a good candidate” for Business Court Division treatment. We agree. And although Defendants do not join in this motion, their counsel has authorized Highmark WV to report that Defendants do not oppose a referral to the Business Court Division.

The Business Court Division’s specialized knowledge and experience will ensure that this business litigation is resolved fairly and efficiently. In support of this motion, Highmark WV offers the information set forth in the following paragraphs, as well as the attached docket sheet and relevant pleadings required by *West Virginia Trial Court Rule 29.06*.

ARGUMENT

THIS ACTION SHOULD BE REFERRED TO THE BUSINESS COURT DIVISION UNDER W. VA. TRIAL COURT RULE 29.06

I. Nature of the Action

Highmark WV filed its Complaint against Defendants on October 5, 2018. The Complaint describes how Defendants initiated their fraudulent billing scheme by establishing MedTest Laboratories, LLC (“MedTest”) in Putnam County, West Virginia. *See* Compl. at ¶ 4. MedTest represented itself to be a fully-functioning, independent clinical laboratory, and it obtained the professional certifications and business licenses required for that designation. *Id.* at ¶¶ 25, 27. But MedTest was not a functioning laboratory. *Id.* at ¶ 28. Rather, it was a “front” for Defendants’ billing scheme. *Id.* at ¶ 4. Defendants used MedTest’s appearance of legitimacy and certifications as a vehicle for joining Highmark WV’s health care provider insurance network. *Id.* at ¶¶ 24-28.

After infiltrating the network, Defendants began using MedTest as a conduit for submitting electronic claims for reimbursement to Highmark WV. *Id.* at ¶¶ 29-30. The claims were false, misleading, and fraudulent. *Id.* at ¶¶ 29-35. Specifically, Defendants intentionally coded the claims improperly to give Highmark WV the reasonable impression that MedTest was a functioning laboratory, and that *it* performed, in Putnam County, the clinical and diagnostic services for which it was seeking reimbursement. *Id.* at ¶¶ 29, 32, 39-41.

MedTest, however, did not perform genuine laboratory testing services in West Virginia entitling Defendants to reimbursement from Highmark WV. *Id.* at ¶ 30. MedTest and Defendants billed Highmark WV for services rendered outside of its network, by out-of-state laboratories and opioid recovery centers that lack contractual authority to seek reimbursement from Highmark WV directly. *Id.* at ¶¶ 30, 34. Highmark WV does not know if these out-of-state “providers” who are affiliated with Defendants are legitimate. Further, it is unclear to Highmark WV whether these providers performed actual laboratory services.

The bottom-line of the Complaint is that MedTest was a front for Defendants’ billing scheme, and that *MedTest did not perform the clinical and diagnostic services it billed to Highmark WV.* *Id.* at ¶¶ 1, 30. Defendants secured, unjustly, more than \$6,000,000 in the fraudulent billing scheme. *Id.* at ¶¶ 2, 34-35.

Highmark WV’s specific claims against Defendants are for Fraudulent Misrepresentation & Inducement (Compl. at ¶¶ 37-42), Breach of Contract (¶¶ 43-48), Unjust Enrichment (¶¶ 49-53), Civil Conspiracy (¶¶ 54-58), Joint Venture (¶¶ 59-63), Negligence (¶¶ 64-68), and Piercing the MedTest LLC Veil (¶¶ 69-80).

Defendant Amjad answered Highmark WV’s Complaint on October 31, 2018, and asserted cross-claims for contribution and indemnity against his co-Defendants. *See* Amjad

Answer (Oct. 31, 2018) (attached). On November 26, 2018, the remaining Defendants moved to dismiss all counts of Highmark WV's Complaint, pursuant to Rule 12(b)(6) of the *West Virginia Rules of Civil Procedure*. See Defs' Mot. to Dismiss and Supporting Mem. of Law (Nov. 26, 2018) (attached). Defendant Amjad joined in his co-Defendants' Motion to Dismiss on January 14, 2019, over objection from Highmark WV. See Amjad Joinder (Jan. 14, 2019) (attached); see also Highmark WV's Response to Amjad Joinder (Feb. 4, 2019).

The Circuit Court of Wood County, West Virginia, heard oral argument on Defendants' Motion to Dismiss on February 7, 2019. By Order entered on March 21, 2019, the Court denied Defendants' Motion to Dismiss; directed Defendants to answer Highmark WV's Complaint; and commanded the parties to proceed with discovery. See Or. Denying Defs' Mot. to Dismiss (Mar. 21, 2019) (attached).

On April 8, 2019, Defendants (with the exception of Defendant Amjad, who already had answered the Complaint) collectively filed their Answer to Highmark WV's Complaint. See Defs' Answer, Counterclaims, and Third-Party Complaint (April 8, 2019) (attached).² Accordingly, the instant motion is ripe under West Virginia Trial Court Rule 29.06(a)(2) ("The motion shall be filed after the time to answer the complaint has expired.").

² Defendants' Answer includes six Counterclaims against Highmark WV, which mimic Highmark WV's initial Complaint and contend that it had a duty to fund Defendants' fraudulent billing scheme. Highmark WV has filed a Motion to Dismiss the Counterclaims, together with a supporting Memorandum of Law. See Highmark WV's Mot. to Dismiss Counterclaims (Apr. 30, 2019) (attached); see also Highmark WV's Mem. of Law in Support of Mot. to Dismiss Counterclaims (Apr. 30, 2019) (attached). Highmark's Motion to Dismiss has not been set for hearing. Defendants' Answer also includes a Third-Party Complaint against sixty-three members of the Blue Cross Blue Shield Association. Their deadline to respond to the Third-Party Complaint is June 26, 2019. See Joint Stipulation to Extension of Time (May 13, 2019) (attached).

II. Basis for Request

This action meets the definition of “Business Litigation” set forth in West Virginia Trial Court Rule 29.04 (outlining three requirements supporting referral to Business Court Division). First, the principal claims at issue involve matters of significance to transactions between two business entities, Highmark WV (a commercial healthcare insurer) and MedTest (a healthcare provider). *Id.* at Rule 29.04(a)(1). The issue of whether MedTest presented legitimate claims for reimbursement to Highmark WV and coded the claims correctly under law, contract, and policy, goes to the heart of the parties’ business relationship. Indeed, Highmark WV alleges substantial losses of at least \$6 million in processing claims for reimbursement submitted by MedTest and Defendants. *See* Compl. at ¶¶ 2, 34-35. In light of these substantial losses, Highmark WV’s breach of contract, fraud, and other claims are of great significance to the parties’ commercial relationship and their reimbursement transactions.

Second, this action presents commercial issues in which specialized treatment in the Business Court Division likely will improve the expectation of a fair and reasonable resolution. *Id.* at Rule 29.04(a)(2). It specifically requires specialized knowledge and expertise on commercial contract law and interpretation, the healthcare billing and reimbursement process, business fraud, and veil piercing. The billing codes utilized by healthcare providers and insurers also will be a significant issue in discovery and trial, in addition to the interplay of the relevant contracts, policies, and procedures that govern the parties’ commercial relationship. Further, Highmark WV will seek to pierce MedTest’s limited liability company veil to impose personal liability on the individual Defendants. In short, this action has all the hallmarks of business litigation, and it necessitates the Business Court Division’s specific expertise in corporate law, liability, and

damages. The tribunal's experience in unraveling forensic accounting issues relating to Highmark WV's damages will be of particular value.

Third, the claims at issue in this action do not implicate subjects that are ineligible for Business Court Division treatment, such as products liability, personal injury, wrongful death, consumer class actions, insurance bad faith, or landlord-tenant disputes. *Id.* at Rule 29.04(a)(3) (providing full list of subjects Business Court Division may not adjudicate). Rather, this action presents the quintessential business litigation dispute: Defendants established a sham health care provider to infiltrate a commercial insurance network and claim reimbursement for services the provider did not render. The Business Court Division's knowledge and expertise on commercial law and liability will be invaluable in adjudicating this business litigation action fairly and efficiently.

III. No Additional Related Actions are Pending

Highmark WV is not aware of any pending actions that are related to the fraudulent billing scheme that forms the basis of the instant civil action. *See* W. Va. Trial Court Rule 29.06(a)(1).

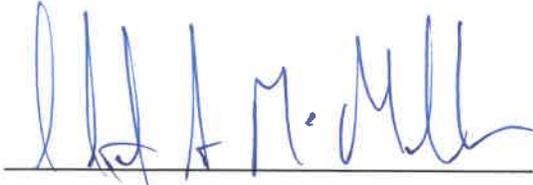
CONCLUSION

WHEREFORE, in view of the foregoing, Highmark WV respectfully requests the entry of an order referring this business litigation action to the Business Court Division for all further proceedings and trial.

Respectfully submitted by,

**HIGHMARK WEST VIRGINIA INC.,
Plaintiff,**

By Counsel,



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Certificate of Service

The undersigned, counsel for Highmark West Virginia Inc., does hereby certify that I have served a true and accurate copy of the foregoing *Motion to Refer Action to the Business Court Division* on the 17th day of June, 2019, via United States Mail to:

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