

**IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA**

HIGHMARK WEST VIRGINIA INC.,

Plaintiff

v.

CIVIL ACTION NO. 18-C-271

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

Defendants.

**COMPLAINT**

**INTRODUCTION**

1. This civil action seeks judgment and damages for defendants' billing scheme. Acting in concert, defendants MedTest Laboratories, LLC ("MedTest"), Brice and/or Billy Taylor, Muhammad Amjad, Ph. D., Michael Chen, Ph. D., and James Taylor (collectively, the "MedTest Defendants") carried out the scheme by making false, misleading, and fraudulent claims for insurance benefits to plaintiff Highmark West Virginia ("Highmark WV"). Specifically, the MedTest Defendants billed Highmark WV for independent laboratory and diagnostic services that MedTest did not perform. Upon information and belief, defendant Vitas Laboratory LLC ("Vitas") and additional unidentified Independent Clinical Laboratories also participated in the billing scheme as co-conspirators with the MedTest Defendants.

2. Highmark WV paid, and the MedTest Defendants secured, more than \$6 million because of the billing scheme, which violated controlling law and was in material breach of the parties' contractual relationship. Now that Highmark has uncovered the scheme, it brings this action against the MedTest Defendants and Vitas, asserting claims for fraudulent misrepresentation and inducement, breach of contract, unjust enrichment, civil conspiracy, and

FILED IN OFFICE

OCT - 5 2018

CAROLE JONES  
CLERK CIRCUIT COURT

negligence. Highmark WV also seeks to pierce the MedTest limited liability company veil. Veil piercing is appropriate to impose personal liability on defendants Brice and/or Billy Taylor, Amjad, Chen, and James Taylor because they used MedTest as a guise to carry-out their billing scheme. The foregoing claims entitle Highmark WV to judgment and damages in excess of \$6 million dollars.

### **PARTIES**

3. Plaintiff Highmark WV is a West Virginia nonprofit corporation with its principal office address in Parkersburg, Wood County, West Virginia. Highmark WV is in the business of providing health care benefits. It is an independent licensee of the Blue Cross and Blue Shield Association (the “Association”) and, as such, is authorized to audit the providers with whom it contracts (such as MedTest) and is assigned the right to seek the recoupment of monies Highmark WV and other licensees in the Association paid as a result of the billing scheme perpetrated by the MedTest Defendants and Vitas.

4. Defendant MedTest is a West Virginia limited liability company with its principal office address in Hurricane, Putnam County, West Virginia. MedTest purports to provide independent laboratory and diagnostic services to the patients of referring physicians. But upon information and belief, MedTest is a non-functioning laboratory and “front” for a billing scheme devised and carried-out by the MedTest Defendants, Vitas, and other unidentified Independent Clinical Laboratories.

5. Upon information and belief, defendant Brice and/or Billy Taylor has an ownership, membership, or managerial interest in MedTest, which defendant Taylor established and operates as a “front” for a billing scheme devised and carried-out by the MedTest Defendants and Vitas.

6. Upon information and belief, defendant Muhammad Amjad, Ph. D., purports to be the “Director” of MedTest, which defendant Amjad established and operates as a “front” for a billing scheme devised and carried-out by the MedTest Defendants and Vitas.

7. Upon information and belief, defendant Michael Chen, Ph. D., purports to be the “Medical Director” of MedTest, which defendant Chen established and operates as a “front” for a billing scheme devised and carried-out by the MedTest Defendants and Vitas.

8. Upon information and belief, defendant James Taylor has an ownership, membership, or managerial interest in MedTest, which defendant Taylor established and operates as a “front” for a billing scheme devised and carried-out by the MedTest Defendants and Vitas.

9. Upon information and belief, defendant Vitas is a West Virginia limited liability company chartered in Putnam County, West Virginia. Vitas billed certain laboratory and diagnostic services through MedTest and was an active co-conspirator in the MedTest Defendants’ billing scheme.

### **JURISDICTION & VENUE**

10. The Circuit Court of Wood County, West Virginia, has jurisdiction because the amount in controversy, excluding interest, exceeds two thousand five hundred dollars, as required by W. Va. Const. Art. VIII, § 6 and W. Va. Code § 51-2-2.

11. Venue is appropriate in the Circuit Court of Wood County, West Virginia, under W. Va. Code § 56-1-1 because, among other things, the MedTest Defendants submitted false, misleading, and fraudulent claims for processing and reimbursement to Highmark WV in Wood County, West Virginia. In addition, Highmark WV and MedTest expressly agreed to venue in the Circuit Court of Wood County, West Virginia, in the Highmark West Virginia Inc. Network Agreement (“Network Agreement”) that governs their relationship and disputes arising therefrom.

### **FACTS**

12. Highmark WV incorporates by reference the allegations of Paragraph 1 through 11 of this Complaint.

***Pertinent Background:  
The Blue Cross and Blue Shield Association & The BlueCard Program***

13. The Blue Cross and Blue Shield Association (“Association”) is comprised of thirty-six independently licensed, community-based and locally operated Blue Cross and Blue Shield companies. These companies are colloquially known as “The Blues.”

14. The Blues operate independently and provide health benefit plans to members and dependents who are enrolled in a Blue Plan (*i.e.*, a health benefits plan operated by a Blue) and are eligible to receive benefits for covered services.

15. Highmark WV is part of one of the thirty-six independently licensed, community-based and locally operated Blues.

16. Highmark WV and other Blues participate in the BlueCard Program. The BlueCard Program is a national program that enables the members of one Blue Plan to obtain health care service benefits while traveling or living in another Blue Plan’s service area.

17. The BlueCard Program links participating health care providers (“Participating Providers”) with the independent Blue Plans operating throughout the country and in more than 200 countries and territories worldwide through a single electronic network for claims processing and reimbursement.

18. Through this electronic network, a Participating Provider that has entered into a “Network Agreement” with Highmark WV may submit claims for members from other Blue Plans, domestic and international, directly to Highmark WV for claims processing and reimbursement.

19. In submitting a claim, Participating Providers must adhere to the requirements of the Network Agreement and follow the claim submission mandates and procedures set forth in the Association's Billing Guidelines and the Highmark WV "Provider Manual," the terms, provisions, and definitions of which the Network Agreement incorporates by reference.

20. The Association's Billing Guidelines and the Provider Manual provide detailed instructions to Participating Providers regarding how they must code correctly the claims they submit to Highmark WV for processing and reimbursement. For example, Participating Providers are required to, among other things, enter the appropriate 2-digit Place of Service code from the Centers for Medicare and Medicaid Services' ("CMS") list for each service they performed for which they seek reimbursement.

21. According to CMS' Place of Service Code list, if the Participating Provider performed a covered service in an "Office" (*i.e.*, a location, other than a hospital, skilled nursing facility (SNF), military treatment facility, community health center, State or local public health clinic, or intermediate care facility (ICF), where the health professional routinely provides health examinations, diagnosis, and treatment of illness or injury on an ambulatory basis), then the Participating Provider must use the two-digit code "11" in submitting a claim. If, on the other hand, the Participating Provider performed a covered service in an "Independent Clinical Laboratory," then it must use the two-digit code "81" in submitting the claim.

22. A Participating Provider's appropriate use of an "81" code in billing a covered service performed in an Independent Clinical Laboratory alerts Highmark WV to direct the claim for reimbursement to the Blue Plan where its members' referring physician is located. A claim coded "81" is directed in this manner in accordance with the Provider Manual, which

instructs Independent Clinical Laboratories to file their claims “[t]o the Blue Plan in whose state the specimen was drawn *based on the location of the referring provider*” (emphasis added). As the Association’s Billing Guidelines have instructed, Participating Providers who qualify as Independent Clinical Laboratories “must file claims to your local Blue Plan” which “ultimately is determined by the state in which the ordering provider [*i.e.*, a physician] is located.”

23. This action, however, does not involve claims that were billed correctly. The claims that the MedTest Defendants submitted for processing and reimbursement were false, misleading, and fraudulent, as the following paragraphs explain.

***The MedTest Defendants’ Scheme to Defraud Highmark WV***

24. On or about August 15, 2016, MedTest entered into a Network Agreement with Highmark WV and became a Participating Provider of Highmark WV. Defendant Amjad signed the Network Agreement on behalf of MedTest using the title “Director.”

25. In applying to join the Highmark WV provider network, MedTest represented that it was fully certified under the Clinical Laboratory Improvement Amendments (“CLIA”) and that it had obtained a valid license to do business in West Virginia as an Independent Clinical Laboratory.

26. The Network Agreement authorized MedTest to participate in the Highmark WV provider network, and to submit claims for reimbursement to Highmark WV for providing covered services to eligible Highmark WV members and dependents and members of other Blue Plans who received covered services in the West Virginia service area.

27. The MedTest Defendants, through their concerted acts and representations, gave Highmark WV the reasonable impression that MedTest was a fully-functioning, independent operation that performed laboratory and diagnostic services at its offices in Putnam County, West Virginia.

28. However, at all times relevant herein, MedTest was not a functioning Independent Clinical Laboratory. Instead, MedTest was a front for the MedTest Defendants' and Vitas' billing scheme.

29. The scheme worked as follows: The MedTest Defendants submitted BlueCard claims for processing and reimbursement to Highmark WV using MedTest's Participating Provider number. In submitting the claims, the MedTest Defendants coded them using the false and misleading Place of Service code "11," indicating that the services were performed in a physician's office in West Virginia.

30. But upon information and belief, MedTest did not perform any services entitling it or the MedTest Defendants to reimbursement from Highmark WV; rather, MedTest billed Highmark WV for services that were ordered by physicians outside of West Virginia and performed by other Independent Clinical Laboratories located outside of West Virginia that do not have a Network Agreement with Highmark WV.

31. Defendant Vitas is one such Independent Clinical Laboratory that does not have a Network Agreement with Highmark WV and that participated as a co-conspirator with the MedTest Defendants in their billing scheme.

32. The MedTest Defendants appreciated and understood that their billing scheme was fraudulent and in violation of MedTest's contractual obligations to Highmark WV. Indeed, MedTest purposely switched from the "81" code to the "11" code in submitting claims to give Highmark WV the reasonable but false impression that the claims related to covered services performed in West Virginia or that the referring physician was located in West Virginia.

33. Upon information and belief, the MedTest Defendants purposefully and intentionally orchestrated their billing scheme through Highmark WV because it provides greater rates of reimbursement than other providers of health care benefits.

34. Highmark WV paid more than \$6 million to the MedTest Defendants in response to the claims they submitted in violation of the Network Agreement, the Provider Manual, the Association's Billing Guidelines, and controlling law. Upon information and belief, a substantial majority of these claims stem from opioid recovery centers that do not have a Network Agreement with Highmark WV.

35. To date, the MedTest Defendants have retained and refused to repay Highmark WV the more than \$6 million the MedTest Defendants swindled from Highmark WV.

36. Further, MedTest has refused to permit Highmark WV to conduct a site visit at MedTest's Putnam County, West Virginia, laboratory facilities, in violation of MedTest's contractual obligations to Highmark WV.

## **CLAIMS**

### **COUNT I – FRAUDULENT MISREPRESENTATION & INDUCEMENT**

37. Highmark WV incorporates by reference the allegations of Paragraphs 1 through 36 of this Complaint.

38. Acting in concert, the MedTest Defendants devised and perpetrated a fraudulent scheme to bill Highmark WV for laboratory and diagnostic services that MedTest did not perform.

39. The MedTest Defendants carried out the fraudulent billing scheme by submitting false, misleading, and fraudulent claims for processing and reimbursement to Highmark WV. Specifically, the MedTest Defendants billed Highmark WV electronically using misleading

and incorrect codes representing that the services were performed in a physician's office and that MedTest performed covered services at its office in Putnam County, West Virginia. To the extent services were performed, they were performed by other Independent Clinical Laboratories, located outside of West Virginia, that were not contracted with Highmark WV to submit claims to Highmark WV for processing and reimbursement.

40. By intentionally coding the claims incorrectly, the MedTest Defendants gave Highmark WV the false and misleading impression that Medtest was a fully-functioning, operational laboratory; that MedTest performed the services for which it was seeking claims processing and reimbursement; and that MedTest performed covered services at its office in Putnam County, West Virginia.

41. Because the MedTest Defendants used misleading and incorrect billing codes as a means of intentionally perpetrating the billing scheme, Highmark WV relied upon and was justified under the circumstances in relying upon defendants' fraudulent billing representations.

42. Highmark WV was damaged in relying upon defendants' fraudulent billing scheme, paying MedTest more than \$6 million for services it did not perform. Accordingly, Highmark WV is entitled to, among other things, an award of compensatory damages, consequential damages, and punitive damages against the MedTest Defendants, including but not limited to interest, attorneys' fees, and costs.

#### **COUNT II – BREACH OF CONTRACT**

43. Highmark WV incorporates by reference the allegations of Paragraphs 1 through 42 of this Complaint.

44. Highmark WV and MedTest entered into the Network Agreement and, accordingly, are bound by its terms and conditions, as well as the terms, provisions, and definitions

of the Provider Manual that was incorporated into the Network Agreement by reference. MedTest, moreover, is bound by the terms and conditions of the Association's Billing Guidelines.

45. MedTest was contractually obligated by the Network Agreement to submit claims for processing and reimbursement properly and in accordance with the mandates and procedures set forth in the Provider Manual, which, among other things, required MedTest and the MedTest Defendants to utilize the appropriate CMS Place of Service code in submitting claims and to adhere to the Association's Billing Guidelines.

46. In submitting claims for services it did not perform, and in utilizing false and misleading Place of Service codes in submitting the claims, MedTest has breached the terms and conditions of the Network Agreement repeatedly, in blatant violation of the Provider Manual and the Association's Billing Guidelines.

47. Further, MedTest denied Highmark WV its contractual right to visit MedTest's purported laboratory facilities in Putnam County, West Virginia, in violation of the Network Agreement and Provider Manual.

48. Because these repeated breaches have deprived Highmark WV of more than \$6 million dollars and fly in the face of the implied covenant of good faith and fair dealing, the breaches are material and entitle Highmark WV to an award of compensatory and consequential damages.

### **COUNT III – UNJUST ENRICHMENT**

49. Highmark WV incorporates by reference the allegations of Paragraphs 1 through 48 of this Complaint.

50. The MedTest Defendants' billing scheme was fraudulent, in breach of the Network Agreement and other contractual obligations, and caused Highmark WV to pay more than \$6 million.

51. Throughout the billing scheme, the MedTest Defendants fully appreciated that Highmark WV had no obligation, contractual or otherwise, to pay MedTest's false and misleading claims, but for the fact that the claims were coded in such a manner as to give Highmark WV the impression that they were legitimate and payable by Highmark WV.

52. The MedTest Defendants have retained and been unjustly enriched by more than \$6 million that it swindled from Highmark WV through the billing scheme.

53. Because the MedTest Defendants have been unjustly enriched, it would be inequitable for them to retain the more than \$6 million it acquired from Highmark WV.

#### **COUNT IV – CIVIL CONSPIRACY**

54. Highmark WV incorporates by reference the allegations of Paragraphs 1 through 53 of this Complaint.

55. The MedTest Defendants, Vitas, and other unknown Independent Clinical Laboratories combined, through concerted action, to accomplish an unlawful purpose; that is, the MedTest Defendants, Vitas, and other unknown Independent Clinical Laboratories devised and perpetrated a fraudulent scheme to bill Highmark WV for laboratory and diagnostic services that MedTest did not perform, carrying out the scheme by using false, misleading, and fraudulent *billing codes in submitting claims to Highmark WV for processing and reimbursement.*

56. The billing scheme that was devised and carried out by the MedTest Defendants, Vitas, and other unknown Independent Clinical Laboratories injured Highmark WV because it was misled into paying the MedTest Defendants more than \$6 million it was not legally or contractually obligated to pay.

57. The MedTest Defendants, Vitas, and other unknown Clinical Laboratories benefitted from MedTest's receipt of the more than \$6 million it acquired from Highmark WV under the guise of legitimate billing.

58. Accordingly, Highmark WV is entitled to judgment and damages against the MedTest Defendants, Vitas, and other unidentified Independent Clinical Laboratories for civil conspiracy.

#### **COUNT V – JOINT VENTURE**

59. Highmark WV incorporates by reference the allegations of Paragraphs 1 through 58 of this Complaint.

60. The MedTest Defendants, Vitas, and other unidentified Independent Clinical Laboratories associated for the purpose of carrying-out a billing scheme to the detriment of Highmark WV.

61. By associating, the MedTest Defendants, Vitas, and other unidentified Independent Clinical Laboratories colluded and combined their property, money, skill, and knowledge to carry-out their billing scheme, misleading Highmark WV into paying more than \$6 million in claims for reimbursement.

62. The combined efforts of the MedTest Defendants, Vitas, and other unidentified Independent Clinical Laboratories to carry out their billing scheme enterprise makes each defendant in this joint venture responsible and liable for any and all conduct arising therefrom.

63. As a foreseeable, direct, and proximate cause of defendants' joint venture, Highmark WV has sustained damages and is entitled to judgment and appropriate relief, including compensatory and punitive damages, and attorneys' fees and costs.

#### **COUNT VI – NEGLIGENCE**

64. Highmark WV incorporates by reference the allegations of Paragraphs 1 through 63 of this Complaint.

65. Alternatively, the MedTest Defendants were dutybound under the Network Agreement, Provider Manual, the Association's Billing Guidelines, and governing laws and

regulations, to submit claims for processing and reimbursement to Highmark WV correctly, lawfully, and in accordance with MedTest's contractual obligations.

66. The MedTest Defendants breached its duties by using incorrect billing codes in submitting claims for processing and reimbursement to Highmark WV.

67. The MedTest Defendants' breach of its duties under the Network Agreement, Provider Manual, the Association's Billing Guidelines, and governing laws and regulations, proximately caused Highmark WV to sustain damages in excess of \$6 million, not including interest, consequential damages, attorneys' fees, and costs.

68. Accordingly, the MedTest Defendants are liable in negligence to Highmark WV and Highmark WV is entitled to judgment and damages against the MedTest Defendants.

#### **COUNT VII – PIERCING THE MEDTEST LLC VEIL**

69. Highmark WV incorporates by reference the allegations of Paragraphs 1 through 68 of this Complaint.

70. West Virginia's Uniform Limited Liability Company Act is applicable to MedTest and permits the equitable remedy of piercing the veil to hold members and managers of a limited liability company personally liable for the wrongful acts and omissions of the business.

71. Upon information and belief, MedTest is not a legitimate business and has failed, among other things, to observe the corporate formalities required by West Virginia's Uniform Limited Liability Company Act.

72. Upon information and belief, MedTest's members and managers do not function for a proper corporate purpose.

73. Upon information and belief, MedTest does not keep appropriate corporate records.

74. Upon information and belief, defendants Brice and/or Billy Taylor, Amjad, Chen, and James Taylor commingle their personal funds with the funds of MedTest.

75. Upon information and belief, MedTest fails to maintain arm's-length relationships among the related Independent Clinical Laboratories with which it does business.

76. Upon information and belief, MedTest is a mere façade for the fraudulent personal billing scheme operations of defendants Brice and/or Billy Taylor, Amjad, Chen, and James Taylor.

77. Upon information and belief, there exists such unity of interest and ownership among MedTest, as a limited liability company, and defendants Brice and/or Billy Taylor, Amjad, Chen, and James Taylor that they do not have separate corporate personalities in the eyes of West Virginia's Uniform Limited Liability Company Act.

78. Upon information and belief, MedTest is not a functioning laboratory and did not perform any covered services in connection with the claims for reimbursement that are at issue.

79. Because an inequitable result would occur if defendants Brice and/or Billy Taylor's, Amjad's, Chen's, and James Taylor's false, misleading, and fraudulent acts are treated as those of MedTest alone, this Court should permit Highmark WV to pierce MedTest's limited liability company veil and impose personal liability on the individual MedTest Defendants; namely, defendants Brice and/or Billy Taylor, Amjad, Chen, and James Taylor. Defendants Brice and/or Billy Taylor, Amjad, Chen, and James Taylor used MedTest as a front to carry out their deceptive billing scheme and they should not enjoy the limited liability protections afforded by West Virginia's Uniform Limited Liability Company Act.

80. Highmark WV has sustained damages of more than \$6 million as a result of MedTest's sham billing (as orchestrated and carried out by defendants Brice and/or Billy Taylor, Amjad, Chen, and James Taylor), and defendants Brice and/or Billy Taylor, Amjad, Chen, and James Taylor should be held personally liable in equity for the billing scheme that they carried out through MedTest as a facade.

**PRAYER FOR RELIEF**

81. WHEREFORE, in view of the foregoing, Highmark WV prays for judgment against the MedTest Defendants and Vitas, jointly and severally, and an award of compensatory damages with interest, consequential damages, punitive damages, attorneys' fees and costs, and such other relief as this Court deems just and proper.

**PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE**

*Stuart A. McMillan by A. Boone*

Stuart A. McMillan (WV Bar No. 6352)  
Peter G. Markham (WV Bar No. 9396)  
BOWLES RICE LLP  
600 Quarrier Street  
Charleston, WV 25301

P.O. Box 1386  
Charleston, WV 25325-1386

*Counsel for Plaintiff Highmark WV*