

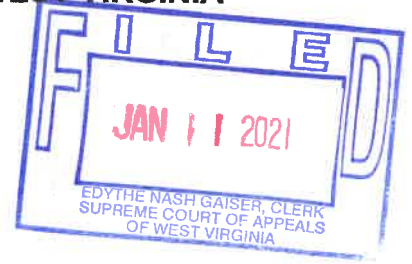
IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

DOCTORS SPECIALTY CARE, LLC,

Plaintiff,

v.

Civil Action No. 20-C-196-2
THOMAS A. BEDELL, Chief Judge



THE HEALTH PLAN OF WEST VIRGINIA, INC.,

Defendant.

TO: THE HONORABLE CHIEF JUSTICE

JUDICIAL MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the *West Virginia Trial Court Rules*, the Honorable Thomas A. Bedell, Chief Judge for the Fifteenth Judicial Circuit, respectfully submits his request that the above-styled Civil Action No. 20-C-196-2, currently pending before the Circuit Court of Harrison County, Division 2, be referred to the Business Court Division.

No Motion to Refer has been filed jointly or otherwise herein by the parties' litigant. This request is initiated solely by this Honorable Judge who is presently presiding herein. He verily believes the Business Court Division's process for efficiently managing and resolving litigation involving commercial issues and disputes between businesses is better suited to serve the parties' litigant herein.

To the best of this Honorable Judge's knowledge and belief based upon his review of the pleadings filed to date, the various claims being asserted herein by Plaintiff, Doctors

Specialty Care, LLC (hereafter referred to as “Plaintiff”) and defenses asserted by Defendant, The Health Plan Of West Virginia, Inc. (hereafter referred to as “Defendant”) as well as the issues involved, qualify as “business litigation” pursuant to Rule 29.04(a) of the *West Virginia Trial Court Rules* insofar as they:

1. Involve matters of significance to related transactions, operations, or governance between and/or among the entities joined or potentially involved herein.

2 Present appropriately commercial and/or technology issues in which specialized treatment might likely improve the expectation of a fair and reasonable resolution of the controversies because of the need for specialized knowledge or expertise in the subject matter or familiarity with particularly specific law or legal principles that may be applicable.

3. Do not involve any particularly identified or defined types of claims, disputes or litigation as collectively identified in Rule 29.04(a)(3).

Nature of the Action

The nature of this Civil Action primarily involves Breach of Contract, Breach of the Duty of Good Faith and Fair Dealing and Failure or Refusal to Comply with Statutory Provisions (i.e.; Violation of “Prompt Pay Act” as codified at West Virginia Code § 33-45-1, *et seq.*, and otherwise entitled “Ethics and Fairness in Insurer Business Practices”) with requested recovery of ascertainable actual damages including, but not limited to, attorney fees and costs as well as interest.

In support of this Judicial Motion to Refer, this matter is deemed to contain issues significant to businesses as well as present novel or otherwise interestingly intertwined issues as to a “Physician Agreement” between the parties’ litigant and purported refusal

of Defendant to compensate for services performed by Plaintiff pursuant to terms contained therein for which specialized treatment may be helpful.

Basis for this Judicial Motion to Refer

More particularly, Plaintiff's *Complaint* was filed herein on August 7, 2020 and Defendant's *Answer To Complaint* was filed herein on December 7, 2020. Various averred and/or otherwise admitted to therein respectively, *inter alia*, are that:

(a) Plaintiff, as a West Virginia limited liability company with its principal place of business located in Harrison County, West Virginia advances two (2) counts against Defendant, "Breach of Contract" and "Violation Of Prompt Pay Act", while demanding judgment against Defendant past and continuing injury in a financial amount to be further determined that should include the value of services provided, pre-judgment and post-judgment interest, and attorneys' fees and costs.

(b) Defendant is a West Virginia corporation doing business in various West Virginia counties including, but not limited to, Harrison County, West Virginia which is further averred to be a health insurance corporation offering to contract with employers, individuals, unions, trusts; that is a clinically-driven, technology-enhanced, and customer-focused health maintenance organization managing and improving the health and well-being of its members; and particularly that there was a contractual relationship between Plaintiff and Defendant (i.e.; "Physician Agreement") which was ultimately terminated by Defendant with Plaintiff on or about July 7, 2018.

(c) Defendant's Ninth and Tenth Affirmative Defenses particularly assert all defenses set forth in West Virginia Code § 33-45-1 *et seq.* while specifically noting the "another payor exception" and remaining defenses set forth in West Virginia Code § 33-

45-2(a)(1)(A)-(E) as well as that such code provisions are inapplicable to Plaintiff's *Complaint* allegations pursuant to West Virginia Code § 33-45-8(f).

An *Order Converting Status Conference To Pre-Trial Scheduling Conference* was entered herein on December 15, 2020 which advised the parties' litigant and their respective legal counsel that a Pre-Trial and Scheduling Conference would be convened on December 21, 2020 and further directed that Pre-Trial Memorandum be submitted to this Honorable Judge on or before December 14, 2020.

Such Conference was conducted herein on that date and a *Pre-Trial And Scheduling Order* was caused to be entered thereafter on December 22, 2020 with a copy of *Pre-Trial Memorandum Of The Defendant Plaintiff* (as hand-corrected) and *Pre-Trial Memorandum Of The Defendant The Health Plan Of West Virginia, Inc.* having been respectively filed on December 22, 2020.¹

Plaintiff's Pre-Trial Memorandum includes a brief statement as to contentions, to-wit: "The plaintiff and the defendant entered a physician agreement contract where by the plaintiff would provide medical services to insured of the defendant for which the defendant would pay. The defendant has refused to pay the plaintiff for services performed." Further provided therein, Plaintiff proffers that the total amount due from Defendant is in excess of \$350,000.00.

Defendant's Pre-Trial Memorandum likewise includes a brief statement as to contentions, to-wit: "The parties entered a physician agreement contract whereby the plaintiff would provide medical services to insured persons. The Plaintiff failed to provide supporting documentation for the medical services provided."

¹ The original Pre-Trial Memorandum on behalf of Plaintiff was subsequently filed on December 28, 2020 which reflected the incorrect caption of *Pre-Trial Memorandum Of The Defendant*.

Upon all of which, this instant matter is now very early in discovery as nothing more has yet been filed by either party and/or made a matter of record herein. However, this Court surmises that discovery may well produce myriad billing statements for services rendered and other related documents. As such, this Honorable Judge believes the Business Court Division's specialized court docket including a process for efficient management and resolution of business dispute litigation would best serve this matter involving such parties' litigant.

There are no known related civil actions currently pending before this Court and this Honorable Judge is unaware of any other related actions that may be filed.

Accordingly, this Civil Action is deemed by this Honorable Judge to involve issues which support his bases for requesting referral to the Business Court Division.

Pursuant to the requirements of West Virginia Rule 29.06(a)(1), copies of various pleadings herein are being provided along with this Judicial Motion to Refer, to-wit: Plaintiff's *Complaint*; Defendant's *Answer To Complaint*; Pre-Trial Memorandums; this Court's *Pre-Trial And Scheduling Order*; and this Civil Action's docket sheet.

In keeping with Rule 29.06(a)(3), this Honorable Judge is providing and serving a true copy of this Motion to Refer (sans various pleadings or docket sheet) directly to the Clerk of the Harrison County Circuit Court as well as to the parties through their respective legal counsel of record via first class USPS mail, to-wit:

Gregory H. Schillace, Esq.
Schillace Law Office
Post Office Box 1526
Clarksburg, WV 26302-1526
Counsel for Plaintiff

Jennifer B. Hagedorn, Esq.
Bowles Rice LLP
1800 Main Street, Suite 200
Canonsburg, PA 15317
Counsel for Defendant

A true copy of this Judicial Motion to Refer along with the various pleadings and docket sheet are also being served and otherwise provided to the Central Office of the Business Court Division via first class USPS mail at Berkeley County Judicial Center, 380 West South Street, Suite 2100, Martinsburg, WV 25401 in further keeping therewith.

Conclusion

WHEREFORE, this Honorable Judge, upon the reasons set forth above, respectfully moves Chief Justice Evan H. Jenkins, to grant this Judicial Motion to Refer Harrison County Civil Action No. 20-C-196-2 to the Business Court Division.

Regarding expedited review, this Court does not request such a review under *West Virginia Trial Court Rule 29.06(a)(4)* and gives notice that all affected parties may file a reply memorandum stating their respective positions in accordance with Rule 29 of such Trial Court Rules.

With the original Judicial Motion to Refer along with two (2) copies thereof being provided, this matter is respectfully submitted to you on January 6, 2020.



THOMAS A. BEDELL, Chief Judge
15th Judicial Circuit ~ Division 2

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

DOCTORS SPECIALTY CARE, LLC,

Plaintiff,

v.

Civil Action No. 20-C-196-2

THE HEALTH PLAN OF WEST VIRGINIA, INC.,

Defendant.

COMPLAINT

1. The plaintiff, Doctors Speciality Care, LLC, is a West Virginia limited liability company, with its principal place of business in Harrison County, West Virginia.

2. Upon information and belief, the defendant, The Health Plan of West Virginia, Inc., is a West Virginia corporation, doing business in various West Virginia counties, including, but not limited to, Harrison County, West Virginia.

3. Upon information and belief, the defendant, The Health Plan of West Virginia, Inc., was formerly known as The Health Plan of the Upper Ohio Valley, Inc., with the change of name effective as of January 17, 2017.

4. The defendant, The Health Plan of West Virginia, Inc., is a health insurance corporation offering to contract with employers, individuals, unions, trusts, associations, partnerships and other organizations to provide prepaid comprehensive health care plans to their employees, members or participants.

5. Upon information and belief, the defendant, The Health Plan of West Virginia, Inc., operates under the trade name of "The Health Plan".

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CIRCUIT COURT
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6. The plaintiff, Doctors Speciality Care, LLC, entered into a contractual relationship with the defendant, The Health Plan of West Virginia, Inc., to provide certain medical services to members of the defendant, The Health Plan of West Virginia, Inc.

7. The contractual agreement between the plaintiff and the defendant is entitled "Physician Agreement" and was entered into by the parties with an effective date of July 7, 2015 with a one year term.

8. The express and unambiguous terms of the Physician Agreement provide that the agreement was automatically renewed for additional one year terms, on the same terms and conditions absent written notice given by either party at least ninety (90) days prior to the renewal date.

9. The Physician Agreement provides that any termination of the Physician Agreement shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of termination.

10. In accordance with the Physician Agreement, the plaintiff provided medical services to members of the defendant.

11. The defendant, The Health Plan of West Virginia, Inc., benefitted from the services provided to its members by the plaintiff, Doctors Speciality Care, LLC.

12. The express and unambiguous provision of the Physician agreement require the defendant to compensate the plaintiff for the medical services provided to the members of the defendant.

13. The defendant has failed and/or refused to compensate the plaintiff pursuant to the terms of the Physician Agreement for the services rendered.

14. The defendant, The Health Plan of West Virginia, Inc., breached the physician agreement by its failure to pay the plaintiff in accordance with the terms of the agreement.

15. The defendant, The Health Plan of West Virginia, Inc., terminated the physician agreement with the plaintiff on or about July 7, 2018.

16. As a direct and proximate result of the breach of the contractual agreement, as well as, the refusal of the defendant to compensate for services performed, the plaintiff, has been, and continues to be, damaged.

17. The Circuit Court of Harrison County, West Virginia has original and general jurisdiction with respect to this civil action pursuant to West Virginia Code §55-2-2(b) as the amount in controversy, excluding interest, exceeds \$7,500.00.

COUNT I

Breach of Contract

18. The plaintiff realleges each and every allegation herein above set forth in paragraphs 1 through 17 as if each such allegation were set forth verbatim herein.

19. The failure and/or refusal to pay the plaintiff by the defendant is a breach of the Physician Agreement by the defendant.

20. The defendant breached the duty of good faith and fair dealing owed to the plaintiff by the wrongful refusal to pay for services performed in accordance with the Physician Agreement.

21. The breach of contract and breach of the duty of good faith and fair dealing by the defendant, was the direct and proximate cause of damage to the plaintiff.

Count II

Violation Of Prompt Pay Act

22. The plaintiff realleges each and every allegation herein above set forth in paragraphs 1 through 21 as if each such allegation were set forth verbatim herein.

23. West Virginia Code §33-45-1, et seq. Entitled the "Ethics and Fairness in Insurer Business Practices" requires the defendant to pay the plaintiff within certain time periods.

24. The defendant failed and/or refused to comply with the provisions of West Virginia Code §33-45-1, et seq. in various ways including, but not limited to, the failure and/or refusal to timely pay the plaintiff for services performed.

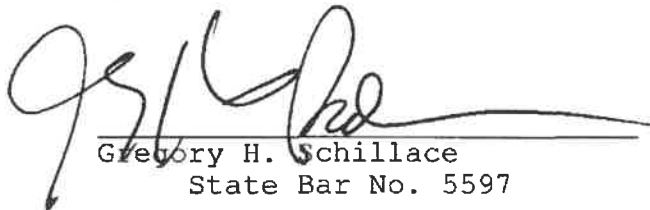
25. The breach of the provisions of West Virginia Code §33-45-1, et seq. by the defendant is and continues to be the proximate cause of damage and injury to the plaintiff.

26. West Virginia Code §33-45-3 provides that the plaintiff is entitled to file this action and recover its actual damages which includes, but is not limited to, attorney fees and costs as well as interest from the defendant.

27. As a proximate result of the acts, conduct and omissions of the defendant, in violation of West Virginia Code §33-45-1, et seq. the plaintiff has suffered and continues to suffer injury and damage.

WHEREFORE, the plaintiff, Doctors Speciality Care, LLC, demands judgment against the defendant, in an amount to be determined at the trial of this matter, including but not limited to, the value of services provided, pre and post-judgment interest, attorneys' fees and costs.

THE PLAINTIFF DEMANDS A TRIAL BY JURY.



Gregory H. Schillace
State Bar No. 5597

Counsel for Plaintiff,
Doctors Speciality Care, LLC

Schillace Law Office
Post Office Box 1526
Clarksburg, WV 26302-1526
Telephone: (304) 624-1000
Facsimile: (304) 624-9100

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FILED IN 15TH
CIRCUIT COURT

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

DOCTORS SPECIALTY CARE, LLC,

Plaintiff,

v.

THE HEALTH PLAN OF WEST
VIRGINIA, INC.,

Defendant.

Civil Action No. 20-c-196

Judge Thomas A. Bedell

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CLERK OF COURT
HARRISON COUNTY
WEST VIRGINIA

ANSWER TO COMPLAINT

Defendant, The Health Plan of West Virginia, Inc., ("The Health Plan" or "Defendant"), by and through its undersigned counsel, hereby files its Answer to the Complaint filed by Doctors Specialty Care, LLC ("Plaintiff"), and states as follows:

1. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint, and, therefore, denies same and demands strict proof thereof.
2. The Defendant admits the allegations contained in Paragraph 2 of Plaintiff's Complaint.
3. The Defendant admits the allegations contained in Paragraph 3 of Plaintiff's Complaint.
4. The Defendant admits that it is a clinically-driven, technology-enhanced, and customer-focused health maintenance organization that manages and improves the health and well-being of its members. The Defendant admits that it contracts with employers. Defendant is

without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 4 of the Complaint, and, therefore, denies same and demands strict proof thereof.

5. The Defendant admits the allegations contained in Paragraph 5 of Plaintiff's Complaint.

6. The Defendant admits that there was a contractual relationship between the Plaintiff and The Health Plan. The remaining allegations of Paragraph 6 of Plaintiff's Complaint references a writing that speaks for itself.

7. Defendant admits that it entered into a Physician Agreement with Plaintiff on or about July 7, 2015. The remaining allegations of Paragraph 7 of Plaintiff's Complaint references a writing that speaks for itself.

8. Paragraph 8 of Plaintiff's Complaint references a writing that speaks for itself. Defendant denies all other allegations contained in Paragraph 8.

9. Paragraph 9 of Plaintiff's Complaint references a writing that speaks for itself.

10. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint, and, therefore, denies same and demands strict proof thereof.

11. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint, and, therefore, denies same and demands strict proof thereof.

12. Paragraph 12 of Plaintiff's Complaint references a writing that speaks for itself.

13. The Defendant denies the allegations contained in Paragraph 13 of Plaintiff's Complaint and demands strict proof thereof.

14. The Defendant denies the allegations contained in Paragraph 14 of Plaintiff's Complaint and demands strict proof thereof.

15. The Defendant admits the allegations contained in Paragraph 15 of Plaintiff's Complaint.

16. The Defendant denies the allegations contained in Paragraph 16 of Plaintiff's Complaint and demands strict proof thereof.

17. Paragraph 17 of Plaintiff's Complaint states a legal conclusion to which a response is not required. To the extent that a response is required, Defendant denies the allegations contained in Paragraph 17 of the Plaintiff's Complaint.

COUNT I

Breach of Contract

18. Defendant incorporates by reference its responses to Paragraphs 1 through 17 of Plaintiff's Complaint.

19. Defendant denies the allegations contained in Paragraph 19 of Plaintiff's Complaint and demands strict proof thereof.

20. Defendant denies the allegations contained in Paragraph 20 of Plaintiff's Complaint and demands strict proof thereof.

21. Defendant denies the allegations contained in Paragraph 21 of Plaintiff's Complaint and demands strict proof thereof.

COUNT II

Violation of Prompt Pay Act

22. Defendant incorporates by reference its responses to Paragraphs 1 through 21 of Plaintiff's Complaint.

23. Paragraph 23 of Plaintiff's Complaint states a legal conclusion to which a response is not required. To the extent that a response is required, Defendant denies the allegations contained in Paragraph 23 of the Plaintiff's Complaint.

24. Defendant denies the allegations contained in Paragraph 24 of Plaintiff's Complaint and demands strict proof thereof.

25. Defendant denies the allegations contained in Paragraph 25 of Plaintiff's Complaint and demands strict proof thereof.

26. Paragraph 26 of Plaintiff's Complaint states a legal conclusion to which a response is not required. To the extent that a response is required, Defendant denies the allegations contained in Paragraph 26 of the Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiff's Complaint is barred, in whole or in part, based on the doctrines of accord and satisfaction, release, settled, discharge, ratification, and/or waiver.

Second Affirmative Defense

Plaintiff's Complaint is barred, in whole or in part, based on the failure to mitigate damages.

Third Affirmative Defense

Plaintiff's Complaint is barred, in whole or in part, based on his material breach of the underlying contractual documents.

Fourth Affirmative Defense

Plaintiff's damages, if any, were not proximately caused by any act or omission by The Health Plan, but by the acts or omissions of other persons or entities for whose actions The Health Plan is not legally responsible.

Fifth Affirmative Defense

The Health Plan invokes the doctrine of first breach and asserts that Plaintiff materially breached the contract between the parties and, therefore, cannot sue to enforce the provisions thereof.

Sixth Affirmative Defense

Plaintiff has failed to fulfill its duties and obligations under any contract which duties and obligations are conditions precedent to the maintenance of this action and, therefore, Plaintiff is not entitled to any recovery in its favor.

Seventh Affirmative Defense

To the extent it has any duty to Plaintiff, The Health Plan has not breached any such duty.

Eighth Affirmative Defense

Plaintiff's claims are barred by the Statute of Frauds.

Ninth Affirmative Defense

The Health Plan asserts all defenses set forth in W. Va. Code §§ 33-45-1 *et seq.*, including, but not limited to, the "another payor exception" and the remaining defenses set forth in W. Va. Code § 33-45-2(a)(1)(A)-(E).

Tenth Affirmative Defense

The Health Plan asserts that W. Va. Code §§ 33-45-1 *et seq.* is inapplicable to the allegations set forth in the Complaint pursuant to W. Va. Code § 33-45-8(f).

Eleventh Affirmative Defense

The Health Plan asserts that Plaintiff failed to exhaust all remedies or avenues for relief prior to the filing of this Civil Action as required by the underlying contractual documents.

Twelfth Affirmative Defense

Plaintiff's Complaint fails to state a claim or cause of action upon which relief can be granted against Defendant.

Thirteenth Affirmative Defense

The Health Plan reserves its right to assert additional affirmative defenses as set forth in Rule 8(c) of the West Virginia Rules of Civil Procedure.

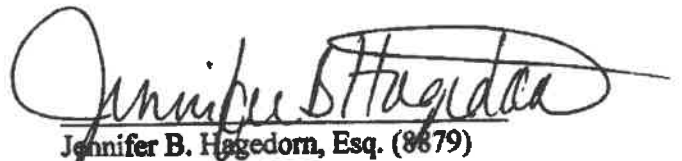
Fourteenth Affirmative Defense

Defendant reserves the right to amend its Answer and Affirmative Defenses if investigation, discovery and/or further information should warrant such amendments and, further, to assert any applicable defenses during the pendency of this action.

WHEREFORE, Defendant, The Health Plan of West Virginia, Inc., by counsel, respectfully requests this Honorable Court to: 1) deny the relief sought by Plaintiff's Complaint; 2) dismiss Plaintiff's Complaint with prejudice; 3) award it judgment against Plaintiff for the costs of defense, including reasonable attorney fees and associated expenses, as allowed by law; and 4) grant it such other relief as the Court may deem just and proper.

THE HEALTH PLAN OF WEST
VIRGINIA, INC.

Dated: December 4, 2020



Jennifer B. Hagedorn, Esq. (8679)
BOWLES RICE LLP
1800 Main Street, Suite 200
Canonsburg, PA 15317
Phone: 724-514-8915
Fax: 724-514-8954
E-Mail: jhagedorn@bowlesrice.com
Counsel for Defendant

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CLERK OF COURT

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on this 4th day of December, 2020, that a true and correct copy of the foregoing Answer to Complaint was served by depositing same in the U.S. Mail, postage prepaid, and addressed as follows:

Gregory H. Schillace, Esq.
Schillace Law Office
PO Box 1526
Clarksburg, WV 26302-1526


Jennifer B. Hagedorn, Esq. (8879)

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SCANNED

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

DOCTORS SPECIALTY CARE, LLC,

Plaintiff,

v.

Civil Action No. 20-C-196

THE HEALTH PLAN OF WEST VIRGINIA, INC.,

Defendant.

Plaintiff

PRE-TRIAL MEMORANDUM OF THE DEFENDANT

The Circuit Court of Harrison County, West Virginia has set the above styled action for a pre-trial conference on the 21st day of December, 2020, at 9:15 a.m. The following is submitted on behalf of the plaintiff.

1. Jurisdiction is admitted.
2. Venue is admitted.
3. Matters remaining to be ruled on by the Court or motions presently offered including (e.g., motion to dismiss, discovery needed, motion in limine, etc.):

None at the present time.

4. Brief statement of this plaintiff's contentions: (SHORT (25 words or less) paragraph):

The plaintiff and the defendant entered a physician agreement contract where by the plaintiff would provide medical services to insured of the defendant for which the defendant would pay. The defendant has refused to pay the plaintiff for services performed.

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CIRCUIT COURT
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5. Matters which are stipulated by the plaintiff:
None at the present time.
6. Issues to be tried by the jury:
 - (a) The liability, for breach of contract by the defendant;
 - (b) The violation by the Prompt Pay Act by the defendant;
 - (c) The damages suffered by the plaintiff, as a result of the conduct of the defendants.
7. Witnesses of this plaintiff:
 - (a) Thomas Lauderman;
 - (b) Dr. Durwood Gandee;
 - (c) One or more representatives of the plaintiff.;
 - (d) Any and all individuals identified in the discovery of this action;
 - (e) Any and all witnesses identified by any party to this action; and,
 - (f) As discovery has not yet commenced, the plaintiff reserves the right to supplement this disclosure.
8. Exhibits of the defendant:
 - (a) Statements for services rendered by the plaintiff;
 - (b) Correspondence between the parties;
 - (c) Physician Agreement;
 - (d) Any and all exhibits identified by any party to this action;
 - (e) Any and all documents and/or tangible items produced in the discovery of this civil action; and

(f) The plaintiff reserves the right to supplement this response as discovery is not yet complete in this matter.

9. Itemized list of special damages:

The total amount due from the defendant to the plaintiff is in excess of \$350,000.00. Additionally pursuant to the Prompt Pay Act the defendant owes attorney fees and costs to the plaintiff.

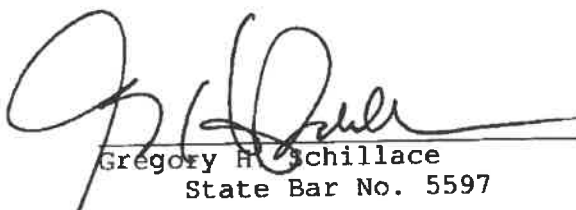
10. It is requested that trial shall be by jury.

It is anticipated that this case will be ready for trial in September of 2021.

It is anticipated that two (2) days will be needed.

It is requested that a six (6) person jury be used.

Dated this 21st day of December, 2020.



Gregory H. Schillace
State Bar No. 5597

Counsel for Plaintiff

Schillace Law Office
Post Office Box 1526
Clarksburg, West Virginia 26302-1526
Telephone: 304-624-1000
Facsimile: 304-624-9100

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

DOCTORS SPECIALTY CARE, LLC,

Plaintiff,

v.

Civil Action No. 20-C-196

THE HEALTH PLAN OF WEST VIRGINIA, INC.,

Defendant.

**PRE-TRIAL MEMORANDUM OF THE DEFENDANT THE HEALTH PLAN OF
WEST VIRGINIA, INC.**

The Circuit Court of Harrison County, West Virginia has set the above styled action for a pre-trial conference on the 21st day of December, 2020, at 9:15 a.m. The following is submitted on behalf of the Defendant, The Health Plan of West Virginia, Inc.

1. Jurisdiction is admitted.
2. Venue is admitted.
3. Matters remaining to be ruled on by the Court or motions presently offered including (e.g., motion to dismiss, discovery needed, motion in limine, etc.):

None at the present time.

4. Brief statement of this Defendant's contentions:

The parties entered a physician agreement contract whereby the plaintiff would provide medical services to insured persons. The Plaintiff failed to provide supporting documentation for the medical services provided.

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FILED
CIRCUIT COURT
HARRISON COUNTY
WEST VIRGINIA

-
5. Matters which are stipulated by the Defendant: None at the present time.
 6. Issues to be tried by the jury:
 - (a) Whether the Plaintiff breached the contract by failing to provide supporting documentation for the medical services provided to insured persons;
 - (b) Whether the Defendant withheld payment in good faith therefore the Prompt Pay Act was not violated;
 - (c) Whether the plaintiff suffered any damages.
 7. Witnesses of this plaintiff:
 - (a) Thomas Lauderman;
 - (b) Dr. Durwood Gandee;
 - (c) Other employees of the Plaintiff;
 - (d) Persons identified in the discovery of this action;
 - (e) Any and all witnesses identified by any party to this action; and,
 - (f) As discovery has not yet commenced, the Defendant reserves the right to supplement this disclosure.
 8. Exhibits of the defendant:
 - (a) Statements for services rendered by the plaintiff;
 - (b) Correspondence between the parties;
 - (c) Physician Agreement;
 - (d) Any and all exhibits identified by any party to this action;
 - (e) Any and all documents and/or tangible items produced in the discovery of this civil action; and
-

(f) The Health Plan of West Virginia, Inc. reserves the right to supplement this response as discovery is not yet complete in this matter.

9. Itemized list of special damages:

None.

10. It is requested that trial shall be by jury.

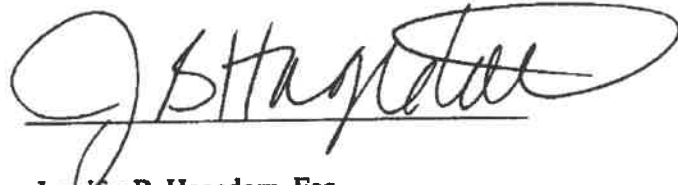
It is anticipated that this case will be ready for trial in September of 2021.

It is anticipated that two (2) days will be needed.

It is requested that a six (6) person jury be used.

Dated this 21st day of December, 2020.

Counsel for The Health Plan of West Virginia, Inc.

A handwritten signature in black ink, appearing to read "J B Hagedorn", written over a horizontal line.

Jennifer B. Hagedorn, Esq.
West Virginia Bar No. 8879
Bowles Rice, LLP
1800 Main Street, Suite 200
Canonsburg, PA 15317
Telephone: 724-514-8940
Facsimile: 724-514-8954

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

DOCTORS SPECIALTY CARE, LLC,

Plaintiff,

v.

Civil Action No. 20-C-196

THE HEALTH PLAN OF WEST VIRGINIA, INC.,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of December, 2020, I served the foregoing PRE-TRIAL MEMORANDUM OF THE DEFENDANT THE HEALTH PLAN OF WEST VIRGINIA, INC., upon all opposing parties of record by depositing a true copy thereof in the United States mail, first-class postage prepaid, in an envelope addressed as follows:

Greg Schillace
P.O. Box 1526
Clarksburg, WV 26302

A handwritten signature in dark ink, appearing to read "J. B. Hagler", is written over a horizontal line.

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

DOCTORS SPECIALTY
CARE, LLC,

Plaintiff,

v.

Civil Action No: 20-C-196-2
THOMAS A. BEDELL, Chief Judge

THE HEALTH PLAN OF
WEST VIRGINIA, INC.
Agent: Jeffrey M. Knight,
Interim President,

Defendant.

12-22-2020
G. Schillace
J. Hagedorn

PRE-TRIAL AND SCHEDULING ORDER

This action came before Thomas A. Bedell, Judge of the Circuit Court of Harrison County, West Virginia, on the 21st day of December, 2020, for a Telephonic Pre-Trial/Scheduling Conference pursuant to Rule 16 of the West Virginia Rules of Civil Procedure, the West Virginia Trial Court Rules, and the Court's pretrial procedure; and came, the plaintiff, by Gregory H. Schillace; the defendant by Jennifer B. Hagedorn.

JOINDER and AMENDMENTS

Motions to join additional parties, motions to amend pleadings, and any cross-claim or counterclaim and the reply thereto, as well as any similar motions, shall be fully effected by January 30, 2021.

DISCOVERY SCHEDULE

Plaintiff's Rule 26 expert witnesses and Rule 26(b)(4) information shall be identified on or before March 5, 2021; Defendant's Rule 26 expert witnesses and Rule 26(b)(4) information on or before April 2, 2021. The plaintiff's rebuttal Rule 26 expert witnesses and Rule 26(b)(4)

information shall be identified on or before April 23, 2021.

The disclosures described in West Virginia rules of Civil Procedure 26(b)(4) shall not be required of physicians and other medical providers who examined or treated a party or party's decedent unless the examination was for the sole purpose of providing expert testimony in the case. However, their testimony shall be limited to the medical records unless designated as expert witness for the purpose of giving opinion testimony (i.e., permanent disability, future medical treatment, etc.).

All inspection of property, if applicable, shall be completed on or before N/A.

If any of the defendants wish to have an independent medical examination performed on the Plaintiff, said independent medical examination must be completed and the written report resulting therefrom shall be submitted to all counsel of record on or before N/A.

Discovery shall be completed by November 16, 2021.

For the purpose of this Order, "completed" means that any discovery requiring a response or action shall be filed in sufficient time to permit such response or action by the above date.

FINAL LISTS OF WITNESSES AND EXHIBITS

On or before the 14th day of **December, 2021**, the parties shall file with the Clerk of this Court a list containing their proposed witnesses and exhibits and shall serve a copy of the same upon all counsel of record. Witnesses shall be identified as to whether they will be called in the parties' case-in-chief or as rebuttal witnesses. All exhibits shall be appropriately marked in sequence. Exhibit markers may be secured from the Court Reporter.

On the first day of the trial, counsel shall tender to the **office of the presiding Judge** two (2) binders of the exhibits. These exhibits should be indexed for easy reference and each exhibit should be individually tabbed. One (1) of these binders will be for the Court's use and the other is

for use by the witness. Counsel should have his or her own copy of each exhibit and should furnish opposing counsel(s) with a copy of each exhibit as well. If counsel desires each juror to have a binder of exhibits to view as counsel examines witnesses, these should be prepared for presentation to each juror at the appropriate time with the Court's permission. Any objection to any proposed exhibit shall be filed, in writing, with the appropriate citations thereto as well as the attached exhibit, on or before the 28th day of December, 2021. A copy of said objection shall be filed with the office of the presiding Judge. Failure to comply with this paragraph may constitute a waiver of objections or may result in the Court's denying the admission of the affected exhibits.

In the event of a settlement of this civil action, if counsel for the respective parties herein shall desire the return of their proposed exhibit binders, arrangements must be made with the presiding Judge within fifteen (15) days of the entry of the final Order, otherwise the Court will proceed in disposing of the binders of proposed exhibits by whatever means deemed most efficient and expedient.

MOTIONS IN LIMINE

All motions *in limine*, accompanied by memoranda of law, and all other related pretrial motions, shall be filed with the Clerk of this Court and a copy with the office of the presiding Judge on or before the 14th day of December, 2021.

Responses to such motions shall be filed by counsel with the Clerk of this Court and a copy with the office of the presiding Judge on or before the 28th day of December, 2021.

DISPOSITIVE MOTIONS SCHEDULE

All dispositive motions, supporting memorandums, and affidavits shall be filed with the Clerk of this Court and a copy with the office of the presiding Judge on or before the 30th day

of November, 2021.

All responsive pleadings, supporting memorandums, and counter-affidavits shall be filed with the Clerk of this Court and a copy with the office of the presiding Judge on or before the 14th day of December, 2021.

All rebuttal pleadings, supporting memorandums, and counter-affidavits shall be filed with the Clerk of this Court and a copy with the office of the presiding Judge on or before the 21st day of December, 2021.

A hearing on all dispositive motions shall be scheduled by the Court, if the Court deems a hearing on the same necessary prior to the Final Pretrial Conference; otherwise, the same shall be set for hearing by counsel giving notice to the other side and the Court for the date and time of the Final Pretrial Conference.

All other motions may be filed and set for hearing based on case development.

**PROPOSED JURY INSTRUCTIONS, SPECIAL
INTERROGATORIES, VERDICT FORMS, and VOIR DIRE**

Proposed Jury Instructions or substantive theories of recovery or defense, on damages and on evidentiary matters peculiar to the case, together with pertinent statutory and case authority, special interrogatories, and verdict forms, as appropriate to the case, and all proposed voir dire questions requested by counsel for submission to the jury shall be exchanged by counsel and the original, as well as the same saved on a USB Flash Drive compatible with Microsoft Word be delivered to the office of the presiding Judge on or before the 14th day of December, 2021.

Within two (2) weeks thereafter, the parties shall submit to the office of the presiding Judge, any objections, in writing only, which they may have to the proposed instructions, special

interrogatories, verdict form, or voir dire of the other party(ies).

The Court reserves the right to refuse any proposed instructions or to refuse to consider any objections to the instructions not submitted in compliance herewith.

In the event of a settlement of this civil action, if counsel for the respective parties herein shall desire the return of their proposed jury instructions, special interrogatories, verdict forms, and voir dire, arrangements must be made with the presiding Judge within fifteen (15) days of the entry of the final Order, otherwise the Court will proceed in disposing of the proposed jury instructions, special interrogatories, verdict forms, and voir dire by whatever means deemed most efficient and expedient.

FILING OF DISCOVERY FOR USE AT TRIAL

On or before the 14th day of December, 2021, the parties shall file with the office of the presiding Judge any interrogatories, answers thereto, depositions, etc., specifying the appropriate portions thereto that the parties intend to offer in this case. Any objection(s) to the introduction of any of the foregoing shall be tried, in writing with the office of the presiding Judge, by each of the parties on or before the 28th day of December, 2021, or such objection(s) shall be deemed to have been waived. **This paragraph is not to apply to discovery materials that will be used at trial solely in cross-examination or for impeachment.**

In the event of a settlement of this civil action, if counsel for the respective parties herein shall desire the return of their discovery, arrangements must be made with the presiding Judge within fifteen (15) days of the entry of the final Order, otherwise the Court will proceed in disposing of the discovery by whatever means deemed most efficient and expedient.

STIPULATIONS

Counsel are encouraged to meet with one another and enter into stipulations of fact in this case and any such stipulation shall be reduced to writing, signed by all counsel of record, and filed with the Court and with opposing counsel on or before the 14th day of December, 2021.

FINAL PRETRIAL CONFERENCE/SETTLEMENT CONFERENCE

The Final Pretrial Conference/Settlement Conference in this matter shall be held on the 11th day of January, 2022, at 8:00 o'clock a.m. Said conference shall be attended by **LEAD TRIAL COUNSEL** for each represented party and all unrepresented party(ies). Counsel and parties should be prepared to participate fully and to discuss all aspects of the case. Individuals with full authority to settle the case for each party shall be present in person or immediately available by telephone. The Court may reset the Settlement Conference for additional discussions as necessary.

TRIAL DATE

This matter is hereby set for **JURY TRIAL** during the week of **January 18, 2021**. Three days have been set aside for the trial.

MEDIATION

The Court finds that this is an appropriate case for reference to mediation. Therefore, pursuant to Rule 25 of the West Virginia Trial Court Rules, this case is referred to mediation. Selection of a mediator shall be pursuant to TCR 25.05, and the parties shall have **15 days** from the entry of the within Order to select a mediator and notify the Court; if the parties are unable to agree to such selection, counsel for the Plaintiff(s) shall immediately notify the Court. in writing, and the Court will subsequently make such selection by Order. Mediation shall be scheduled and concluded on or before the 1st day of **October, 2021**, unless such deadline is otherwise

extended by the Court for good cause shown. At the conclusion of said mediation, the mediator shall immediately notify the Court, in writing, of the results of said mediation. The costs associated with said mediation attempt shall be borne equally by all the parties. Said mediation shall be a condition precedent to the jury trial hereinabove set.

It is now **ORDERED** that this Pretrial and Scheduling Order shall control the course of this action unless modified by the Court for good cause.

The Clerk is hereby directed to send a certified copy of this Order to:
1) Gregory H. Schillace, Esq., Schillace Law Office, Post Office Box 1526, Clarksburg, WV 26302-1526; and, 2) Jennifer B. Hagedorn, Esq. Bowles Rice LLP 1800 Main Street, Suite 200, Canonsburg, PA 15317.

ENTER: December 22, 2020


THOMAS A. BEDELL, Chief Judge

JUDGE... JUDGE THOMAS A. BEDELL

PLAINTIFF. DOCTORS SPECIALTY CARE, LLC
VS DEFENDANT. THE HEALTH PLAN OF WV, INC.PRO ATTY.. GREGORY SCHILLACE
DEF ATTY..

PAGE# DATE MEMORANDUM.....

00001 8/07/20 Receipt, Correspondence, CCIS, Complaint, Summons with service
00002 8/07/20 on The Health Plan thru SOS with 30 day return. dm
00003 8/17/20 Serv. ret. of summons, complaint to SOS for Health Plan of
00004 8/17/20 WV 8/11/20 djs
00005 11/20/20 ORDER SCHEDULING STATUS CONFERENCE. Status Conf. set for
00006 11/20/20 12-21-2020 @ 9:15 am. C- G. Schillace. sp
00007 12/07/20 Answer to Complaint, w/COS Filed by J. Hagedorn, Esq jsd
00008 12/15/20 ORDER CONVERTING STATUS CONFERENCE TO PRE-TRIAL SCHEDULING
00009 12/15/20 CONFERENCE. Status Conf. converted to Pre-Trial/Scheduling
00010 12/15/20 Conf. and set for 12-21-2020 @ 9:15 am. C- G. Schillace &
00011 12/15/20 J. Hagedorn. sp
00012 12/22/20 Pre-trial memorandum of plttff. filed by G. Schillace djs
00013 12/22/20 Pre-trial memorandum of def. The Health Plan of WV, COS
00014 12/22/20 filed by J. Hagedorn djs
00015 12/22/20 PRE-TRIAL & SCHEDULING ORDER. Final Pre-Trial Conf. set for
00016 12/22/20 1-11-2022 @ 8:00 am. Jury Trial set for week of 1-18-2022.
00017 12/22/20 Three days have been set aside for the trial. C- J. Hage-
00018 12/22/20 dorn & G. Schillace. sp
00019 12/28/20 Pre-Trial Memorandum of the Def Filed by Schillace.COS. cas

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

DOCTORS SPECIALTY CARE, LLC,

Plaintiff,

v.

Civil Action No. 20-C-196-2

THOMAS A. BEDELL, Chief Judge

THE HEALTH PLAN OF WEST VIRGINIA, INC.,

Defendant.

TO: THE HONORABLE CHIEF JUSTICE

JUDICIAL MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the *West Virginia Trial Court Rules*, the Honorable Thomas A. Bedell, Chief Judge for the Fifteenth Judicial Circuit, respectfully submits his request that the above-styled Civil Action No. 20-C-196-2, currently pending before the Circuit Court of Harrison County, Division 2, be referred to the Business Court Division.

No Motion to Refer has been filed jointly or otherwise herein by the parties' litigant. This request is initiated solely by this Honorable Judge who is presently presiding herein. He verily believes the Business Court Division's process for efficiently managing and resolving litigation involving commercial issues and disputes between businesses is better suited to serve the parties' litigant herein.

To the best of this Honorable Judge's knowledge and belief based upon his review of the pleadings filed to date, the various claims being asserted herein by Plaintiff, Doctors

Specialty Care, LLC (hereafter referred to as "Plaintiff") and defenses asserted by Defendant, The Health Plan Of West Virginia, Inc. (hereafter referred to as "Defendant") as well as the issues involved, qualify as "business litigation" pursuant to Rule 29.04(a) of the *West Virginia Trial Court Rules* insofar as they:

1. Involve matters of significance to related transactions, operations, or governance between and/or among the entities joined or potentially involved herein.

2 Present appropriately commercial and/or technology issues in which specialized treatment might likely improve the expectation of a fair and reasonable resolution of the controversies because of the need for specialized knowledge or expertise in the subject matter or familiarity with particularly specific law or legal principles that may be applicable.

3. Do not involve any particularly identified or defined types of claims, disputes or litigation as collectively identified in Rule 29.04(a)(3).

Nature of the Action

The nature of this Civil Action primarily involves Breach of Contract, Breach of the Duty of Good Faith and Fair Dealing and Failure or Refusal to Comply with Statutory Provisions (i.e.; Violation of "Prompt Pay Act" as codified at West Virginia Code § 33-45-1, *et seq.*, and otherwise entitled "Ethics and Fairness in Insurer Business Practices") with requested recovery of ascertainable actual damages including, but not limited to, attorney fees and costs as well as interest.

In support of this Judicial Motion to Refer, this matter is deemed to contain issues significant to businesses as well as present novel or otherwise interestingly intertwined issues as to a "Physician Agreement" between the parties' litigant and purported refusal

of Defendant to compensate for services performed by Plaintiff pursuant to terms contained therein for which specialized treatment may be helpful.

Basis for this Judicial Motion to Refer

More particularly, Plaintiff's *Complaint* was filed herein on August 7, 2020 and Defendant's *Answer To Complaint* was filed herein on December 7, 2020. Various averred and/or otherwise admitted to therein respectively, *inter alia*, are that:

(a) Plaintiff, as a West Virginia limited liability company with its principal place of business located in Harrison County, West Virginia advances two (2) counts against Defendant, "Breach of Contract" and "Violation Of Prompt Pay Act", while demanding judgment against Defendant past and continuing injury in a financial amount to be further determined that should include the value of services provided, pre-judgment and post-judgment interest, and attorneys' fees and costs.

(b) Defendant is a West Virginia corporation doing business in various West Virginia counties including, but not limited to, Harrison County, West Virginia which is further averred to be a health insurance corporation offering to contract with employers, individuals, unions, trusts; that is a clinically-driven, technology-enhanced, and customer-focused health maintenance organization managing and improving the health and well-being of its members; and particularly that there was a contractual relationship between Plaintiff and Defendant (i.e.; "Physician Agreement") which was ultimately terminated by Defendant with Plaintiff on or about July 7, 2018.

(c) Defendant's Ninth and Tenth Affirmative Defenses particularly assert all defenses set forth in West Virginia Code § 33-45-1 *et seq.* while specifically noting the "another payor exception" and remaining defenses set forth in West Virginia Code § 33-

45-2(a)(1)(A)-(E) as well as that such code provisions are inapplicable to Plaintiff's *Complaint* allegations pursuant to West Virginia Code § 33-45-8(f).

An *Order Converting Status Conference To Pre-Trial Scheduling Conference* was entered herein on December 15, 2020 which advised the parties' litigant and their respective legal counsel that a Pre-Trial and Scheduling Conference would be convened on December 21, 2020 and further directed that Pre-Trial Memorandum be submitted to this Honorable Judge on or before December 14, 2020.

Such Conference was conducted herein on that date and a *Pre-Trial And Scheduling Order* was caused to be entered thereafter on December 22, 2020 with a copy of *Pre-Trial Memorandum Of The Defendant Plaintiff* (as hand-corrected) and *Pre-Trial Memorandum Of The Defendant The Health Plan Of West Virginia, Inc.* having been respectively filed on December 22, 2020.¹

Plaintiff's Pre-Trial Memorandum includes a brief statement as to contentions, to-wit: "The plaintiff and the defendant entered a physician agreement contract where by the plaintiff would provide medical services to insured of the defendant for which the defendant would pay. The defendant has refused to pay the plaintiff for services performed." Further provided therein, Plaintiff proffers that the total amount due from Defendant is in excess of \$350,000.00.

Defendant's Pre-Trial Memorandum likewise includes a brief statement as to contentions, to-wit: "The parties entered a physician agreement contract whereby the plaintiff would provide medical services to insured persons. The Plaintiff failed to provide supporting documentation for the medical services provided."

¹ The original Pre-Trial Memorandum on behalf of Plaintiff was subsequently filed on December 28, 2020 which reflected the incorrect caption of *Pre-Trial Memorandum Of The Defendant*.

Upon all of which, this instant matter is now very early in discovery as nothing more has yet been filed by either party and/or made a matter of record herein. However, this Court surmises that discovery may well produce myriad billing statements for services rendered and other related documents. As such, this Honorable Judge believes the Business Court Division's specialized court docket including a process for efficient management and resolution of business dispute litigation would best serve this matter involving such parties' litigant.

There are no known related civil actions currently pending before this Court and this Honorable Judge is unaware of any other related actions that may be filed.

Accordingly, this Civil Action is deemed by this Honorable Judge to involve issues which support his bases for requesting referral to the Business Court Division.

Pursuant to the requirements of West Virginia Rule 29.06(a)(1), copies of various pleadings herein are being provided along with this Judicial Motion to Refer, to-wit: Plaintiff's *Complaint*; Defendant's *Answer To Complaint*; Pre-Trial Memorandums; this Court's *Pre-Trial And Scheduling Order*; and this Civil Action's docket sheet.

In keeping with Rule 29.06(a)(3), this Honorable Judge is providing and serving a true copy of this Motion to Refer (sans various pleadings or docket sheet) directly to the Clerk of the Harrison County Circuit Court as well as to the parties through their respective legal counsel of record via first class USPS mail, to-wit:

Gregory H. Schillace, Esq.
Schillace Law Office
Post Office Box 1526
Clarksburg, WV 26302-1526
Counsel for Plaintiff

Jennifer B. Hagedorn, Esq.
Bowles Rice LLP
1800 Main Street, Suite 200
Canonsburg, PA 15317
Counsel for Defendant

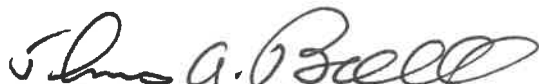
A true copy of this Judicial Motion to Refer along with the various pleadings and docket sheet are also being served and otherwise provided to the Central Office of the Business Court Division via first class USPS mail at Berkeley County Judicial Center, 380 West South Street, Suite 2100, Martinsburg, WV 25401 in further keeping therewith.

Conclusion

WHEREFORE, this Honorable Judge, upon the reasons set forth above, respectfully moves Chief Justice Evan H. Jenkins, to grant this Judicial Motion to Refer Harrison County Civil Action No. 20-C-196-2 to the Business Court Division.

Regarding expedited review, this Court does not request such a review under *West Virginia Trial Court Rule 29.06(a)(4)* and gives notice that all affected parties may file a reply memorandum stating their respective positions in accordance with Rule 29 of such Trial Court Rules.

With the original Judicial Motion to Refer along with two (2) copies thereof being provided, this matter is respectfully submitted to you on January 6, 2020.



THOMAS A. BEDELL, Chief Judge
15th Judicial Circuit ~ Division 2

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

DOCTORS SPECIALTY CARE, LLC,

Plaintiff,

v.

Civil Action No. 20-C-196-2

THE HEALTH PLAN OF WEST VIRGINIA, INC.,

Defendant.

COMPLAINT

1. The plaintiff, Doctors Speciality Care, LLC, is a West Virginia limited liability company, with its principal place of business in Harrison County, West Virginia.

2. Upon information and belief, the defendant, The Health Plan of West Virginia, Inc., is a West Virginia corporation, doing business in various West Virginia counties, including, but not limited to, Harrison County, West Virginia.

3. Upon information and belief, the defendant, The Health Plan of West Virginia, Inc., was formerly known as The Health Plan of the Upper Ohio Valley, Inc., with the change of name effective as of January 17, 2017.

4. The defendant, The Health Plan of West Virginia, Inc., is a health insurance corporation offering to contract with employers, individuals, unions, trusts, associations, partnerships and other organizations to provide prepaid comprehensive health care plans to their employees, members or participants.

5. Upon information and belief, the defendant, The Health Plan of West Virginia, Inc., operates under the trade name of "The Health Plan".

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6. The plaintiff, Doctors Speciality Care, LLC, entered into a contractual relationship with the defendant, The Health Plan of West Virginia, Inc., to provide certain medical services to members of the defendant, The Health Plan of West Virginia, Inc.

7. The contractual agreement between the plaintiff and the defendant is entitled "Physician Agreement" and was entered into by the parties with an effective date of July 7, 2015 with a one year term.

8. The express and unambiguous terms of the Physician Agreement provide that the agreement was automatically renewed for additional one year terms, on the same terms and conditions absent written notice given by either party at least ninety (90) days prior to the renewal date.

9. The Physician Agreement provides that any termination of the Physician Agreement shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of termination.

10. In accordance with the Physician Agreement, the plaintiff provided medical services to members of the defendant.

11. The defendant, The Health Plan of West Virginia, Inc., benefitted from the services provided to its members by the plaintiff, Doctors Speciality Care, LLC.

12. The express and unambiguous provision of the Physician agreement require the defendant to compensate the plaintiff for the medical services provided to the members of the defendant.

13. The defendant has failed and/or refused to compensate the plaintiff pursuant to the terms of the Physician Agreement for the services rendered.

14. The defendant, The Health Plan of West Virginia, Inc., breached the physician agreement by its failure to pay the plaintiff in accordance with the terms of the agreement.

15. The defendant, The Health Plan of West Virginia, Inc., terminated the physician agreement with the plaintiff on or about July 7, 2018.

16. As a direct and proximate result of the breach of the contractual agreement, as well as, the refusal of the defendant to compensate for services performed, the plaintiff, has been, and continues to be, damaged.

17. The Circuit Court of Harrison County, West Virginia has original and general jurisdiction with respect to this civil action pursuant to West Virginia Code §55-2-2(b) as the amount in controversy, excluding interest, exceeds \$7,500.00.

COUNT I

Breach of Contract

18. The plaintiff realleges each and every allegation herein above set forth in paragraphs 1 through 17 as if each such allegation were set forth verbatim herein.

19. The failure and/or refusal to pay the plaintiff by the defendant is a breach of the Physician Agreement by the defendant.

20. The defendant breached the duty of good faith and fair dealing owed to the plaintiff by the wrongful refusal to pay for services performed in accordance with the Physician Agreement.

21. The breach of contract and breach of the duty of good faith and fair dealing by the defendant, was the direct and proximate cause of damage to the plaintiff.

Count II

Violation Of Prompt Pay Act

22. The plaintiff realleges each and every allegation herein above set forth in paragraphs 1 through 21 as if each such allegation were set forth verbatim herein.

23. West Virginia Code §33-45-1, et seq. Entitled the "Ethics and Fairness in Insurer Business Practices" requires the defendant to pay the plaintiff within certain time periods.

24. The defendant failed and/or refused to comply with the provisions of West Virginia Code §33-45-1, et seq. in various ways including, but not limited to, the failure and/or refusal to timely pay the plaintiff for services performed.

25. The breach of the provisions of West Virginia Code §33-45-1, et seq. by the defendant is and continues to be the proximate cause of damage and injury to the plaintiff.

26. West Virginia Code §33-45-3 provides that the plaintiff is entitled to file this action and recover its actual damages which includes, but is not limited to, attorney fees and costs as well as interest from the defendant.

27. As a proximate result of the acts, conduct and omissions of the defendant, in violation of West Virginia Code §33-45-1, et seq. the plaintiff has suffered and continues to suffer injury and damage.

WHEREFORE, the plaintiff, Doctors Speciality Care, LLC, demands judgment against the defendant, in an amount to be determined at the trial of this matter, including but not limited to, the value of services provided, pre and post-judgment interest, attorneys' fees and costs.

THE PLAINTIFF DEMANDS A TRIAL BY JURY.



Gregory H. Schillace
State Bar No. 5597

Counsel for Plaintiff,
Doctors Speciality Care, LLC

Schillace Law Office
Post Office Box 1526
Clarksburg, WV 26302-1526
Telephone: (304) 624-1000
Facsimile: (304) 624-9100

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IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

DOCTORS SPECIALTY CARE, LLC,

Plaintiff,

v.

THE HEALTH PLAN OF WEST
VIRGINIA, INC.,

Defendant.

Civil Action No. 20-c-196

Judge Thomas A. Bedell

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CLERK OF COURT

ANSWER TO COMPLAINT

Defendant, The Health Plan of West Virginia, Inc., ("The Health Plan" or "Defendant"), by and through its undersigned counsel, hereby files its Answer to the Complaint filed by Doctors Specialty Care, LLC ("Plaintiff"), and states as follows:

1. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint, and, therefore, denies same and demands strict proof thereof.
2. The Defendant admits the allegations contained in Paragraph 2 of Plaintiff's Complaint.
3. The Defendant admits the allegations contained in Paragraph 3 of Plaintiff's Complaint.
4. The Defendant admits that it is a clinically-driven, technology-enhanced, and customer-focused health maintenance organization that manages and improves the health and well-being of its members. The Defendant admits that it contracts with employers. Defendant is

without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 4 of the Complaint, and, therefore, denies same and demands strict proof thereof.

5. The Defendant admits the allegations contained in Paragraph 5 of Plaintiff's Complaint.

6. The Defendant admits that there was a contractual relationship between the Plaintiff and The Health Plan. The remaining allegations of Paragraph 6 of Plaintiff's Complaint references a writing that speaks for itself.

7. Defendant admits that it entered into a Physician Agreement with Plaintiff on or about July 7, 2015. The remaining allegations of Paragraph 7 of Plaintiff's Complaint references a writing that speaks for itself.

8. Paragraph 8 of Plaintiff's Complaint references a writing that speaks for itself. Defendant denies all other allegations contained in Paragraph 8.

9. Paragraph 9 of Plaintiff's Complaint references a writing that speaks for itself.

10. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint, and, therefore, denies same and demands strict proof thereof.

11. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint, and, therefore, denies same and demands strict proof thereof.

12. Paragraph 12 of Plaintiff's Complaint references a writing that speaks for itself.

13. The Defendant denies the allegations contained in Paragraph 13 of Plaintiff's Complaint and demands strict proof thereof.

14. The Defendant denies the allegations contained in Paragraph 14 of Plaintiff's Complaint and demands strict proof thereof.

15. The Defendant admits the allegations contained in Paragraph 15 of Plaintiff's Complaint.

16. The Defendant denies the allegations contained in Paragraph 16 of Plaintiff's Complaint and demands strict proof thereof.

17. Paragraph 17 of Plaintiff's Complaint states a legal conclusion to which a response is not required. To the extent that a response is required, Defendant denies the allegations contained in Paragraph 17 of the Plaintiff's Complaint.

COUNT I

Breach of Contract

18. Defendant incorporates by reference its responses to Paragraphs 1 through 17 of Plaintiff's Complaint.

19. Defendant denies the allegations contained in Paragraph 19 of Plaintiff's Complaint and demands strict proof thereof.

20. Defendant denies the allegations contained in Paragraph 20 of Plaintiff's Complaint and demands strict proof thereof.

21. Defendant denies the allegations contained in Paragraph 21 of Plaintiff's Complaint and demands strict proof thereof.

COUNT II

Violation of Prompt Pay Act

22. Defendant incorporates by reference its responses to Paragraphs 1 through 21 of Plaintiff's Complaint.

23. Paragraph 23 of Plaintiff's Complaint states a legal conclusion to which a response is not required. To the extent that a response is required, Defendant denies the allegations contained in Paragraph 23 of the Plaintiff's Complaint.

24. Defendant denies the allegations contained in Paragraph 24 of Plaintiff's Complaint and demands strict proof thereof.

25. Defendant denies the allegations contained in Paragraph 25 of Plaintiff's Complaint and demands strict proof thereof.

26. Paragraph 26 of Plaintiff's Complaint states a legal conclusion to which a response is not required. To the extent that a response is required, Defendant denies the allegations contained in Paragraph 26 of the Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiff's Complaint is barred, in whole or in part, based on the doctrines of accord and satisfaction, release, settled, discharge, ratification, and/or waiver.

Second Affirmative Defense

Plaintiff's Complaint is barred, in whole or in part, based on the failure to mitigate damages.

Third Affirmative Defense

Plaintiff's Complaint is barred, in whole or in part, based on his material breach of the underlying contractual documents.

Fourth Affirmative Defense

Plaintiff's damages, if any, were not proximately caused by any act or omission by The Health Plan, but by the acts or omissions of other persons or entities for whose actions The Health Plan is not legally responsible.

Fifth Affirmative Defense

The Health Plan invokes the doctrine of first breach and asserts that Plaintiff materially breached the contract between the parties and, therefore, cannot sue to enforce the provisions thereof.

Sixth Affirmative Defense

Plaintiff has failed to fulfill its duties and obligations under any contract which duties and obligations are conditions precedent to the maintenance of this action and, therefore, Plaintiff is not entitled to any recovery in its favor.

Seventh Affirmative Defense

To the extent it has any duty to Plaintiff, The Health Plan has not breached any such duty.

Eighth Affirmative Defense

Plaintiff's claims are barred by the Statute of Frauds.

Ninth Affirmative Defense

The Health Plan asserts all defenses set forth in W. Va. Code §§ 33-45-1 *et seq.*, including, but not limited to, the "another payor exception" and the remaining defenses set forth in W. Va. Code § 33-45-2(a)(1)(A)-(E).

Tenth Affirmative Defense

The Health Plan asserts that W. Va. Code §§ 33-45-1 *et seq.* is inapplicable to the allegations set forth in the Complaint pursuant to W. Va. Code § 33-45-8(f).

Eleventh Affirmative Defense

The Health Plan asserts that Plaintiff failed to exhaust all remedies or avenues for relief prior to the filing of this Civil Action as required by the underlying contractual documents.

Twelfth Affirmative Defense

Plaintiff's Complaint fails to state a claim or cause of action upon which relief can be granted against Defendant.

Thirteenth Affirmative Defense

The Health Plan reserves its right to assert additional affirmative defenses as set forth in Rule 8(c) of the West Virginia Rules of Civil Procedure.

Fourteenth Affirmative Defense

Defendant reserves the right to amend its Answer and Affirmative Defenses if investigation, discovery and/or further information should warrant such amendments and, further, to assert any applicable defenses during the pendency of this action.

WHEREFORE, Defendant, The Health Plan of West Virginia, Inc., by counsel, respectfully requests this Honorable Court to: 1) deny the relief sought by Plaintiff's Complaint; 2) dismiss Plaintiff's Complaint with prejudice; 3) award it judgment against Plaintiff for the costs of defense, including reasonable attorney fees and associated expenses, as allowed by law; and 4) grant it such other relief as the Court may deem just and proper.

THE HEALTH PLAN OF WEST
VIRGINIA, INC.

Dated: December 4, 2020



Jennifer B. Hagedorn, Esq. (8679)

BOWLES RICE LLP

1800 Main Street, Suite 200

Canonsburg, PA 15317

Phone: 724-514-8915

Fax: 724-514-8954

E-Mail: jhagedorn@bowlesrice.com

Counsel for Defendant

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CLERK OF COURT

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on this 4th day of December, 2020, that a true and correct copy of the foregoing Answer to Complaint was served by depositing same in the U.S. Mail, postage prepaid, and addressed as follows:

Gregory H. Schillace, Esq.
Schillace Law Office
PO Box 1526
Clarksburg, WV 26302-1526


Jennifer B. Hagedorn, Esq. (8879)

2020 DEC -7 PM 1:17

SCANNED

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

DOCTORS SPECIALTY CARE, LLC,

Plaintiff,

v.

Civil Action No. 20-C-196

THE HEALTH PLAN OF WEST VIRGINIA, INC.,

Defendant.

Plaintiff

PRE-TRIAL MEMORANDUM OF THE DEFENDANT

The Circuit Court of Harrison County, West Virginia has set the above styled action for a pre-trial conference on the 21st day of December, 2020, at 9:15 a.m. The following is submitted on behalf of the plaintiff.

1. Jurisdiction is admitted.
2. Venue is admitted.
3. Matters remaining to be ruled on by the Court or motions presently offered including (e.g., motion to dismiss, discovery needed, motion in limine, etc.):

None at the present time.

4. Brief statement of this plaintiff's contentions: (SHORT (25 words or less) paragraph):

The plaintiff and the defendant entered a physician agreement contract where by the plaintiff would provide medical services to insured of the defendant for which the defendant would pay. The defendant has refused to pay the plaintiff for services performed.

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CIRCUIT COURT

5. Matters which are stipulated by the plaintiff:
None at the present time.
6. Issues to be tried by the jury:
 - (a) The liability, for breach of contract by the defendant;
 - (b) The violation by the Prompt Pay Act by the defendant;
 - (c) The damages suffered by the plaintiff, as a result of the conduct of the defendants.
7. Witnesses of this plaintiff:
 - (a) Thomas Lauderman;
 - (b) Dr. Durwood Gandee;
 - (c) One or more representatives of the plaintiff.;
 - (d) Any and all individuals identified in the discovery of this action;
 - (e) Any and all witnesses identified by any party to this action; and,
 - (f) As discovery has not yet commenced, the plaintiff reserves the right to supplement this disclosure.
8. Exhibits of the defendant:
 - (a) Statements for services rendered by the plaintiff;
 - (b) Correspondence between the parties;
 - (c) Physician Agreement;
 - (d) Any and all exhibits identified by any party to this action;
 - (e) Any and all documents and/or tangible items produced in the discovery of this civil action; and

(f) The plaintiff reserves the right to supplement this response as discovery is not yet complete in this matter.

9. Itemized list of special damages:

The total amount due from the defendant to the plaintiff is in excess of \$350,000.00. Additionally pursuant to the Prompt Pay Act the defendant owes attorney fees and costs to the plaintiff.

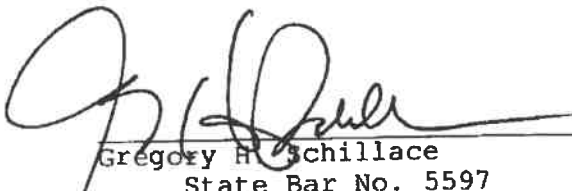
10. It is requested that trial shall be by jury.

It is anticipated that this case will be ready for trial in September of 2021.

It is anticipated that two (2) days will be needed.

It is requested that a six (6) person jury be used.

Dated this 21st day of December, 2020.



Gregory H. Schillace
State Bar No. 5597

Counsel for Plaintiff

Schillace Law Office
Post Office Box 1526
Clarksburg, West Virginia 26302-1526
Telephone: 304-624-1000
Facsimile: 304-624-9100

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

DOCTORS SPECIALTY CARE, LLC,

Plaintiff,

v.

Civil Action No. 20-C-196

THE HEALTH PLAN OF WEST VIRGINIA, INC.,

Defendant.

**PRE-TRIAL MEMORANDUM OF THE DEFENDANT THE HEALTH PLAN OF
WEST VIRGINIA, INC.**

The Circuit Court of Harrison County, West Virginia has set the above styled action for a pre-trial conference on the 21st day of December, 2020, at 9:15 a.m. The following is submitted on behalf of the Defendant, The Health Plan of West Virginia, Inc.

1. Jurisdiction is admitted.
2. Venue is admitted.
3. Matters remaining to be ruled on by the Court or motions presently offered including (e.g., motion to dismiss, discovery needed, motion in limine, etc.):

None at the present time.

4. Brief statement of this Defendant's contentions:

The parties entered a physician agreement contract whereby the plaintiff would provide medical services to insured persons. The Plaintiff failed to provide supporting documentation for the medical services provided.

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FILED
CIRCUIT COURT

-
5. Matters which are stipulated by the Defendant: None at the present time.
 6. Issues to be tried by the jury:
 - (a) Whether the Plaintiff breached the contract by failing to provide supporting documentation for the medical services provided to insured persons;
 - (b) Whether the Defendant withheld payment in good faith therefore the Prompt Pay Act was not violated;
 - (c) Whether the plaintiff suffered any damages.
 7. Witnesses of this plaintiff:
 - (a) Thomas Lauderman;
 - (b) Dr. Durwood Gandee;
 - (c) Other employees of the Plaintiff;
 - (d) Persons identified in the discovery of this action;
 - (e) Any and all witnesses identified by any party to this action; and,
 - (f) As discovery has not yet commenced, the Defendant reserves the right to supplement this disclosure.
 8. Exhibits of the defendant:
 - (a) Statements for services rendered by the plaintiff;
 - (b) Correspondence between the parties;
 - (c) Physician Agreement;
 - (d) Any and all exhibits identified by any party to this action;
 - (e) Any and all documents and/or tangible items produced in the discovery of this civil action; and
-

(f) The Health Plan of West Virginia, Inc. reserves the right to supplement this response as discovery is not yet complete in this matter.

9. Itemized list of special damages:

None.

10. It is requested that trial shall be by jury.

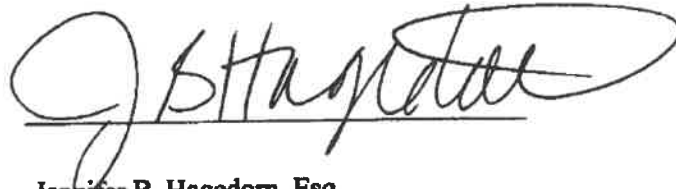
It is anticipated that this case will be ready for trial in September of 2021.

It is anticipated that two (2) days will be needed.

It is requested that a six (6) person jury be used.

Dated this 21st day of December, 2020.

Counsel for The Health Plan of West Virginia, Inc.

A handwritten signature in black ink, appearing to read "J B Hagedorn", written over a horizontal line.

Jennifer B. Hagedorn, Esq.
West Virginia Bar No. 8879
Bowles Rice, LLP
1800 Main Street, Suite 200
Canonsburg, PA 15317
Telephone: 724-514-8940
Facsimile: 724-514-8954

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

DOCTORS SPECIALTY CARE, LLC,

Plaintiff,

v.

Civil Action No. 20-C-196

THE HEALTH PLAN OF WEST VIRGINIA, INC.,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of December, 2020, I served the foregoing PRE-TRIAL MEMORANDUM OF THE DEFENDANT THE HEALTH PLAN OF WEST VIRGINIA, INC., upon all opposing parties of record by depositing a true copy thereof in the United States mail, first-class postage prepaid, in an envelope addressed as follows:

Greg Schillace
P.O. Box 1526
Clarksburg, WV 26302

A handwritten signature in dark ink, appearing to read "J. B. Hagler", is written over a horizontal line.

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

DOCTORS SPECIALTY
CARE, LLC,

Plaintiff,

v.

Civil Action No: 20-C-196-2
THOMAS A. BEDELL, Chief Judge

THE HEALTH PLAN OF
WEST VIRGINIA, INC.
Agent: Jeffrey M. Knight,
Interim President,

Defendant.

12-22-2020
G. Schillace
J. Hagedorn

PRE-TRIAL AND SCHEDULING ORDER

This action came before Thomas A. Bedell, Judge of the Circuit Court of Harrison County, West Virginia, on the 21st day of December, 2020, for a Telephonic Pre-Trial/Scheduling Conference pursuant to Rule 16 of the West Virginia Rules of Civil Procedure, the West Virginia Trial Court Rules, and the Court's pretrial procedure; and came, the plaintiff, by Gregory H. Schillace; the defendant by Jennifer B. Hagedorn.

JOINDER and AMENDMENTS

Motions to join additional parties, motions to amend pleadings, and any cross-claim or counterclaim and the reply thereto, as well as any similar motions, shall be fully effected by January 30, 2021.

DISCOVERY SCHEDULE

Plaintiff's Rule 26 expert witnesses and Rule 26(b)(4) information shall be identified on or before March 5, 2021; Defendant's Rule 26 expert witnesses and Rule 26(b)(4) information on or before April 2, 2021. The plaintiff's rebuttal Rule 26 expert witnesses and Rule 26(b)(4)

information shall be identified on or before April 23, 2021.

The disclosures described in West Virginia rules of Civil Procedure 26(b)(4) shall not be required of physicians and other medical providers who examined or treated a party or party's decedent unless the examination was for the sole purpose of providing expert testimony in the case. However, their testimony shall be limited to the medical records unless designated as expert witness for the purpose of giving opinion testimony (i.e., permanent disability, future medical treatment, etc.).

All inspection of property, if applicable, shall be completed on or before N/A.

If any of the defendants wish to have an independent medical examination performed on the Plaintiff, said independent medical examination must be completed and the written report resulting therefrom shall be submitted to all counsel of record on or before N/A.

Discovery shall be completed by November 16, 2021.

For the purpose of this Order, "completed" means that any discovery requiring a response or action shall be filed in sufficient time to permit such response or action by the above date.

FINAL LISTS OF WITNESSES AND EXHIBITS

On or before the 14th day of **December, 2021**, the parties shall file with the Clerk of this Court a list containing their proposed witnesses and exhibits and shall serve a copy of the same upon all counsel of record. Witnesses shall be identified as to whether they will be called in the parties' case-in-chief or as rebuttal witnesses. All exhibits shall be appropriately marked in sequence. Exhibit markers may be secured from the Court Reporter.

On the first day of the trial, counsel shall tender to the office of the presiding Judge two (2) binders of the exhibits. These exhibits should be indexed for easy reference and each exhibit should be individually tabbed. One (1) of these binders will be for the Court's use and the other is

for use by the witness. Counsel should have his or her own copy of each exhibit and should furnish opposing counsel(s) with a copy of each exhibit as well. If counsel desires each juror to have a binder of exhibits to view as counsel examines witnesses, these should be prepared for presentation to each juror at the appropriate time with the Court's permission. Any objection to any proposed exhibit shall be filed, in writing, with the appropriate citations thereto as well as the attached exhibit, on or before the 28th day of December, 2021. A copy of said objection shall be filed with the office of the presiding Judge. Failure to comply with this paragraph may constitute a waiver of objections or may result in the Court's denying the admission of the affected exhibits.

In the event of a settlement of this civil action, if counsel for the respective parties herein shall desire the return of their proposed exhibit binders, arrangements must be made with the presiding Judge within fifteen (15) days of the entry of the final Order, otherwise the Court will proceed in disposing of the binders of proposed exhibits by whatever means deemed most efficient and expedient.

MOTIONS IN LIMINE

All motions *in limine*, accompanied by memoranda of law, and all other related pretrial motions, shall be filed with the Clerk of this Court and a copy with the office of the presiding Judge on or before the 14th day of December, 2021.

Responses to such motions shall be filed by counsel with the Clerk of this Court and a copy with the office of the presiding Judge on or before the 28th day of December, 2021.

DISPOSITIVE MOTIONS SCHEDULE

All dispositive motions, supporting memorandums, and affidavits shall be filed with the Clerk of this Court and a copy with the office of the presiding Judge on or before the 30th day

of November, 2021.

All responsive pleadings, supporting memorandums, and counter-affidavits shall be filed with the Clerk of this Court and a copy with the office of the presiding Judge on or before the 14th day of December, 2021.

All rebuttal pleadings, supporting memorandums, and counter-affidavits shall be filed with the Clerk of this Court and a copy with the office of the presiding Judge on or before the 21st day of December, 2021.

A hearing on all dispositive motions shall be scheduled by the Court, if the Court deems a hearing on the same necessary prior to the Final Pretrial Conference; otherwise, the same shall be set for hearing by counsel giving notice to the other side and the Court for the date and time of the Final Pretrial Conference.

All other motions may be filed and set for hearing based on case development.

**PROPOSED JURY INSTRUCTIONS, SPECIAL
INTERROGATORIES, VERDICT FORMS, and VOIR DIRE**

Proposed Jury Instructions or substantive theories of recovery or defense, on damages and on evidentiary matters peculiar to the case, together with pertinent statutory and case authority, special interrogatories, and verdict forms, as appropriate to the case, and all proposed voir dire questions requested by counsel for submission to the jury shall be exchanged by counsel and the original, as well as the same saved on a USB Flash Drive compatible with Microsoft Word be delivered to the office of the presiding Judge on or before the 14th day of December, 2021.

Within two (2) weeks thereafter, the parties shall submit to the office of the presiding Judge, any objections, in writing only, which they may have to the proposed instructions, special

interrogatories, verdict form, or voir dire of the other party(ies).

The Court reserves the right to refuse any proposed instructions or to refuse to consider any objections to the instructions not submitted in compliance herewith.

In the event of a settlement of this civil action, if counsel for the respective parties herein shall desire the return of their proposed jury instructions, special interrogatories, verdict forms, and voir dire, arrangements must be made with the presiding Judge within fifteen (15) days of the entry of the final Order, otherwise the Court will proceed in disposing of the proposed jury instructions, special interrogatories, verdict forms, and voir dire by whatever means deemed most efficient and expedient.

FILING OF DISCOVERY FOR USE AT TRIAL

On or before the 14th day of December, 2021, the parties shall file with the office of the presiding Judge any interrogatories, answers thereto, depositions, etc., specifying the appropriate portions thereto that the parties intend to offer in this case. Any objection(s) to the introduction of any of the foregoing shall be tried, in writing with the office of the presiding Judge, by each of the parties on or before the 28th day of December, 2021, or such objection(s) shall be deemed to have been waived. **This paragraph is not to apply to discovery materials that will be used at trial solely in cross-examination or for impeachment.**

In the event of a settlement of this civil action, if counsel for the respective parties herein shall desire the return of their discovery, arrangements must be made with the presiding Judge within fifteen (15) days of the entry of the final Order, otherwise the Court will proceed in disposing of the discovery by whatever means deemed most efficient and expedient.

STIPULATIONS

Counsel are encouraged to meet with one another and enter into stipulations of fact in this case and any such stipulation shall be reduced to writing, signed by all counsel of record, and filed with the Court and with opposing counsel on or before the 14th day of **December, 2021**.

FINAL PRETRIAL CONFERENCE/SETTLEMENT CONFERENCE

The Final Pretrial Conference/Settlement Conference in this matter shall be held on the 11th day of **January, 2022**, at 8:00 o'clock a.m. Said conference shall be attended by **LEAD TRIAL COUNSEL** for each represented party and all unrepresented party(ies). Counsel and parties should be prepared to participate fully and to discuss all aspects of the case. Individuals with full authority to settle the case for each party shall be present in person or immediately available by telephone. The Court may reset the Settlement Conference for additional discussions as necessary.

TRIAL DATE

This matter is hereby set for **JURY TRIAL** during the week of **January 18, 2022**. Three days have been set aside for the trial.

MEDIATION

The Court finds that this is an appropriate case for reference to mediation. Therefore, pursuant to Rule 25 of the West Virginia Trial Court Rules, this case is referred to mediation. Selection of a mediator shall be pursuant to TCR 25.05, and the parties shall have **15 days** from the entry of the within Order to select a mediator and notify the Court; if the parties are unable to agree to such selection, counsel for the Plaintiff(s) shall immediately notify the Court. in writing, and the Court will subsequently make such selection by Order. Mediation shall be scheduled and concluded on or before the 1st day of **October, 2021**, unless such deadline is otherwise

extended by the Court for good cause shown. At the conclusion of said mediation, the mediator shall immediately notify the Court, in writing, of the results of said mediation. The costs associated with said mediation attempt shall be borne equally by all the parties. Said mediation shall be a condition precedent to the jury trial hereinabove set.

It is now **ORDERED** that this Pretrial and Scheduling Order shall control the course of this action unless modified by the Court for good cause.

The Clerk is hereby directed to send a certified copy of this Order to:
1) Gregory H. Schillace, Esq., Schillace Law Office, Post Office Box 1526, Clarksburg, WV 26302-1526; and, 2) Jennifer B. Hagedorn, Esq. Bowles Rice LLP 1800 Main Street, Suite 200, Canonsburg, PA 15317.

ENTER: December 22, 2020


THOMAS A. BEDELL, Chief Judge

JUDGE... JUDGE THOMAS A. BEDELL

PLAINTIFF. DOCTORS SPECIALTY CARE, LLC
VS DEFENDANT. THE HEALTH PLAN OF WV, INC.

PRO ATTY.. GREGORY SCHILLACE

DEF ATTY..

PAGE# DATE MEMORANDUM.....

00001 8/07/20 Receipt, Correspondence, CCIS, Complaint, Summons with service
00002 8/07/20 on The Health Plan thru SOS with 30 day return. dm
00003 8/17/20 Serv. ret. of summons, complaint to SOS for Health Plan of
00004 8/17/20 WV 8/11/20 djs
00005 11/20/20 ORDER SCHEDULING STATUS CONFERENCE. Status Conf. set for
00006 11/20/20 12-21-2020 @ 9:15 am. C- G. Schillace. sp
00007 12/07/20 Answer to Complaint, w/COS Filed by J. Hagedorn, Esq jsd
00008 12/15/20 ORDER CONVERTING STATUS CONFERENCE TO PRE-TRIAL SCHEDULING
00009 12/15/20 CONFERENCE. Status Conf. converted to Pre-Trial/Scheduling
00010 12/15/20 Conf. and set for 12-21-2020 @ 9:15 am. C- G. Schillace &
00011 12/15/20 J. Hagedorn. sp
00012 12/22/20 Pre-trial memorandum of plttf. filed by G. Schillace djs
00013 12/22/20 Pre-trial memorandum of def. The Health Plan of WV, COS
00014 12/22/20 filed by J. Hagedorn djs
00015 12/22/20 PRE-TRIAL & SCHEDULING ORDER. Final Pre-Trial Conf. set for
00016 12/22/20 1-11-2022 @ 8:00 am. Jury Trial set for week of 1-18-2022.
00017 12/22/20 Three days have been set aside for the trial. C- J. Hage-
00018 12/22/20 dorn & G. Schillace. sp
00019 12/28/20 Pre-Trial Memorandum of the Def Filed by Schillace.COS. cas

