

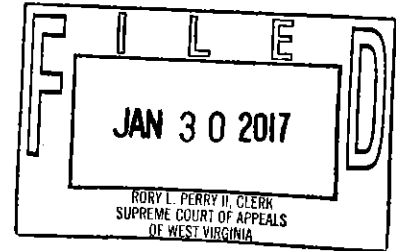
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**CHARLESTON DIABETES AND
ENDOCRINE CONSULTANTS, PLLC, a
West Virginia Professional Limited Liability
Company and PRASUNA JAMI, M.D.,
individually, and on behalf of all other
similarly situated parties,**

Plaintiffs,

v.

**Wood County Circuit Court
Civil Action No. 16-C-457**



**HIGHMARK WEST VIRGINIA, INC., a
West Virginia Corporation, formerly
known as MOUNTAIN STATE BLUE
CROSS & BLUE SHIELD, INC., and
formerly known as BLUE CROSS AND
BLUE SHIELD OF WEST CENTRAL
WEST VIRGINIA, INC.,**

Defendant.

To: The Honorable Chief Justice

MOTION TO REFER

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, Plaintiffs, Charleston Diabetes and Endocrine Consultants, PLLC and Prasuna Jami, M.D., by counsel, Scott S. Segal, C. Edward Amos, II and The Segal Law Firm and Karen H. Miller, Joseph L. Amos, Jr. and the law firm of Miller & Amos, Attorneys at Law, respectfully request that the above styled case be referred to the Business Court Division.

1. The Plaintiffs in this civil action are Prasuna Jami, M.D., individually, and her commercial medical practice, doing business as Charleston Diabetes and Endocrine Consultants, PLLC (the "Plaintiffs"). The Defendant in this civil action is Highmark West Virginia, Inc.

which is believed to be the largest healthcare insurer in the state of West Virginia (“Defendant Highmark”).

2. Primarily, the “Complaint” involves Defendant Highmark’s alleged contractual and statutory violations of the West Virginia Ethics and Fairness in Insurer Business Practices Act, W. Va. § 33-45-1 *et seq.*, otherwise known as the West Virginia Prompt Pay Act (the “Prompt Pay Act”). The Prompt Pay Act provides only a one (1) year statute of limitations for “Retroactive Denials” of a health provider’s previously paid claims, absent extraordinary circumstances. *See* W.Va. Code § 33-45-2(a)(7). The Plaintiffs contend that such extraordinary circumstances do not exist in their case, and that they, like countless other medical providers, are victims of Defendant Highmark’s systematic practice to illegally “Retroactively Deny” healthcare providers’ claims through the disguise of audits. Such audits are governed by Defendant Highmark’s unilateral policies, which also violate the Prompt Pay Act.

3. The Business Court Division is designed to address the “complex nature of litigation involving highly technical commercial issues” in “actions involving such commercial issues and disputes between businesses.” W. Va. Code § 51-2-15(a).

4. Any party may seek to refer “Business Litigation” to the Business Court Division after the time to answer the complaint has expired, and such time has expired. W. Va. Tr. Ct. R. 29.06(a)(1)-(2).

5. To qualify for referral to the Business Court Division, a matter must be “Business Litigation,” as defined by Trial Court Rule 29.04(a). Business Litigation is litigation in which: (1) “the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities,” (2) “the dispute presents commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair

and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable,” and (3) the principal claim or claims are not of the types listed in West Virginia Trial Court Rule 29.04(a)(3). W. Va. Tr. Ct. R. 29.04(a).

6. The present matter satisfies all elements of “Business Litigation” as defined by Trial Court Rule 29.04(a). First, this civil action involves significant transactions and operations between a physician’s medical practice and what is believed to be West Virginia’s largest health insurer. Defendant Highmark has sought an alleged insurance overpayment amount of over One Hundred Forty Thousand Dollars (\$140,000), which the Plaintiffs contend is, at least in part, prohibited by the Prompt Pay Act.

Second, this civil action presents issues to which specialized knowledge or expertise in insurance statutes and regulations are applicable, and, likely, necessary to improve a fair resolution of the underlying causes of action.

Third, it is imperative to note that this not a consumer insurance dispute. This civil action does not involve a medical patient. It is purely a business-to-business dispute which climbs up the insurance ladder. For example, Step I - Patient presents to medical provider and is treated. Step II - Medical provider seeks reimbursement for patient’s treatment from the health insurance company, pursuant to the medical provider and health insurance company’s previously entered into written contractual agreement. Using this example, the controversy in this civil action presents itself entirely at Step II.

7. Plaintiffs have specifically pled allegations under Rule 23 of the West Virginia Rules of Civil Procedure. However, as detailed in the example above, this should not be considered a “consumer litigation,” “consumer class action,” or “consumer insurance coverage

dispute.” Any member of the prospective class in this civil action would also be a medical provider and/or professional medical entity, not a consumer.

8. The Business Court is equipped to handle the many complex commercial issues in this matter, and time is of the essence in addressing the same.

WHEREFORE, Plaintiffs Charleston Diabetes and Endocrine Consultants, PLLC and Prasuna Jami, M.D., respectfully request that this matter be referred to the Business Court Division.

**CHARLESTON DIABETES AND
ENDOCRINE CONSULSTANTS, PLLC, a
West Virginia Professional Limited Liability
Company and PRASUNA JAMI, M.D.,
individually,**

Plaintiffs,

By Counsel:

C. E. A. II

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Defendant.

CERTIFICATE OF SERVICE

I, C. Edward Amos, II, counsel for the Plaintiffs, do hereby certify that I have caused to be served the foregoing, *Motion to Refer*, upon the Defendant, by mailing a true copy thereof to the counsel of record for the Defendant via United States mail, postage pre-paid on this the 27th day of January, 2017, duly addressed as follows:

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Carol Jones, Clerk
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Parkersburg, WV 26101-5353

Honorable Jason Wharton
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Parkersburg, WV 26101

Business Court Division Central Office
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