

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA  
BUSINESS COURT DIVISION

HIGHMARK WEST VIRGINIA, INC.,

Plaintiff,

vs.

Civil Action No.: 18-C-271

Presiding Judge: Shawn D. Nines

Resolution Judge: Christopher C. Wilkes

MEDTEST LABORATORIES, LLC, et al.,

Defendants.

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MEDTEST LABORATORIES LLC,

Counterclaim and Third-Party  
Plaintiff,

vs.

HIGHMARK WEST VIRGINIA INC., et al.,

Counterclaim and Third-Party  
Defendants.

**ORDER DENYING MEDTEST DEFENDANTS'  
MOTION FOR PARTIAL SUMMARY JUDGMENT**

This matter came before the Court this \_\_\_\_ day of April 2020, upon Defendants MedTest Laboratories, LLC (hereinafter "MedTest"), Billy Taylor, Brice Taylor, Michael Chen, Ph. D., James Taylor, Jr., Cenegen, LLC, and Vitas Laboratory's (hereinafter "MedTest Defendants") Motion for Partial Summary Judgment. The parties have fully briefed the issues necessary. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional

Order Denying MedTest Defendants' Motion for Partial Summary Judgment

Page 1 of 10

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Bailey + Glasser, Bowles Rice, M. Anjad  
Whalley Kallas LLP (NH) Whalley Kallas (AD)  
Whalley Kallas (NY)

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process. So, upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

### **FINDINGS OF FACT**

1. This matter was initiated with the Complaint filed on or about October 18, 2018, alleging causes of action for fraudulent misrepresentation & inducement (Count I); breach of contract (Count II), unjust enrichment (Count III); civil conspiracy (Count IV); joint venture (Count V); negligence (Count VI); and “piercing the MedTest LLC veil” (Count VII), related to an alleged billing scheme wherein Plaintiff Highmark West Virginia (hereinafter “Plaintiff” or “Highmark WV”) alleged Defendants MedTest Laboratories, LLC (hereinafter “MedTest”), Brice and/or Billy Taylor, Muhamad Amjad, Ph. D., Michael Chen, Ph. D., and James Taylor, carried out a billing scheme by making fraudulent claims for insurance benefits to Plaintiff<sup>1</sup>. See Compl., ¶¶1, 37-80. On September 13, 2019, Plaintiff filed an Amended Complaint adding Cenegen, LLC as a Defendant, and this Amended Complaint asserts the same causes of action as the original Complaint in the matter<sup>2</sup>. See Am. Compl., ¶¶39-82. Plaintiff seeks damages of up to \$6.5 million from the causes of action alleged in the Amended Complaint. See Pl’s Resp., p. 10, 14; *see also* Am. Compl., ¶¶50, 2, 44, 52, 54-55, 58-59, 63, 69, 82, Def’s Mot., p. 1.

2. On or about June 18, 2019, this civil action was referred to the Business Court Division. On July 22, 2019, the matter was referred to the Business Court Division via Administrative Order of the Supreme Court of Appeals of West Virginia. By Order Assigning

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<sup>1</sup> The Court notes Defendants filed a motion to dismiss the entire Complaint, and this motion was denied by Judge Waters by Order Denying Defendants’ Motion to Dismiss filed March 21, 2019. See Ord., 3/21/19.

<sup>2</sup> The Court notes that thereafter, on September 13, 2019, Defendants filed their First Amended Counterclaims and Third-Party Complaint asserting their own various causes of action. See First Am. Counterclaims and Th. Pty. Compl., ¶¶108- 139.

Presiding and Resolution Judge to Case entered on or about July 29, 2019, the matter was assigned to the undersigned as Presiding Judge.

3. On or about February 20, 2020, the MedTest Defendants filed the instant MedTest Defendants' Motion for Partial Summary Judgment, arguing discovery has revealed that the actual figure of alleged out-of-pocket damages actually suffered by Plaintiff is merely \$3,192.98, because the rest of the \$6 million figure were alleged damages that were suffered by other members of the Blue Cross Blue Shield Association, and Plaintiff has no standing to assert claims on their behalf. *See* Def's Mot., p. 1.

4. On or about March 10, 2020, Defendant Muhammad Amjad, Ph.D., proceeding *pro se*<sup>3</sup>, filed his Response, apparently joining in – or not objecting to – the MedTest Defendants' motion. *See* Def's Resp., p. 1-2.

5. On or about March 13, 2020, Plaintiff filed its Response to the MedTest Defendants' Motion for Partial Summary Judgment, arguing even though there was reimbursement from the other Blue Cross Blue Shield entities, Plaintiff has standing to bring the instant civil action because it is the real party in interest pursuant to Rule 17(a) of the West Virginia Rules of Civil Procedure. *See* Pl's Resp., p. 1-2.

6. On or about March 20, 2020, the MedTest Defendants filed their Reply in Support of the MedTest Defendants' Motion for Partial Summary Judgment, arguing Plaintiff's response argument fails because it does not fit the description of a real party in interest contained in Rule 17(a), and Rule 17(a) cannot be asserted without satisfying the requirements of standing because

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<sup>3</sup> *See* Order Granting Motion for Leave to Withdraw as Counsel for Defendant Muhammad Amjad, Ph.D. entered February 10, 2020.

the doctrine of standing arises from the West Virginia Constitution and Rule 17(a) “only has the force of a statute”. *See* Def’s Reply, p. 1-2.

7. On or about March 30, 2020, Defendant Muhammad Amjad, Ph.D., proceeding *pro se*, filed an Argument and Reply in Support of MedTest Defendants’ Motion for Partial Summary Judgment<sup>4</sup>, reiterating his position that the Court enter in order in the MedTest Defendants’ favor regarding the instant motion and that he supports the MedTest Defendants’ motion. *See* Def’s Reply, p. 1, 2.

8. The Court now finds the instant Motion is ripe for adjudication.

### **STANDARD OF LAW**

9. This matter comes before the Court upon a motion for partial summary judgment. Motions for summary judgment are governed by Rule 56, which states that “judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” W. Va. R. Civ. P. 56(c). West Virginia courts do “not favor the use of summary judgment, especially in complex cases, where issues involving motive and intent are present, or where factual development is necessary to clarify application of the law.” *Alpine Property Owners Ass’n, Inc. v. Mountaintop Dev. Co.*, 179 W.Va. 12, 17 (1987).

10. Therefore, “[a] motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law.” Syl. Pt. 3, *Aetna Cas. and Surety Co. v. Fed. Ins.*

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<sup>4</sup> The Court notes this filing was not contemplated by the Briefing Order put forth regarding the instant motion, which elicited Responses from non-moving parties and a Reply by movant of the instant motion. *See* Br. Ord., 2/27/20.

*Co. of New York*, 148 W.Va. 160, 171 (1963); Syl. Pt. 1, *Andrick v. Town of Buckhannon*, 187 W.Va. 706, 421 S.E.2d 247 (1992); Syl. Pt. 1, *Williams v. Precision Coil, Inc.*, 194 W.Va. 52 (1995). A motion for summary judgment should be denied “even where there is no dispute to the evidentiary facts in the case but only as to the conclusions to be drawn therefrom.” *Williams v. Precision Coil, Inc.*, 194 W.Va. 52, 59 (internal quotations and citations omitted).

11. However, if the moving party has properly supported their motion for summary judgment with affirmative evidence that there is no genuine issue of material fact, then “the burden of production shifts to the nonmoving party ‘who must either (1) rehabilitate the evidence attacked by the movant, (2) produce additional evidence showing the existence of a genuine issue for trial or (3) submit an affidavit explaining why further discovery is necessary as provided in Rule 56(f).’” *Id.* at 60.

### **CONCLUSIONS OF LAW**

12. The MedTest Defendants filed the instant Motion for Partial Summary Judgment, arguing for an upper limit on Plaintiff’s compensatory damages, averring evidence in discovery has revealed Plaintiff “has lost no more than \$3,192.98”, as opposed to the damages of more than \$6 million alleged in the Amended Complaint. *See* Def’s Mot., p. 1. For this reason, the MedTest Defendants seek partial summary judgment on the issue of damages, arguing Plaintiff “has no standing to seek compensatory damages for losses it did not sustain”. *Id.*

13. Generally, standing is defined as “[a] party’s right to make a legal claim or seek judicial enforcement of a duty or right.” Black’s Law Dictionary 1413 (7th ed.1999) *cited by Findley v. State Farm Mut. Auto. Ins. Co.*, 213 W. Va. 80, 94, 576 S.E.2d 807, 821 (2002).

14. “Standing is comprised of three elements: First, the party attempting to establish standing must have suffered an ‘injury-in-fact’—an invasion of a legally protected interest which

is (a) concrete and particularized and (b) actual or imminent and not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct forming the basis of the lawsuit. Third, it must be likely that the injury will be redressed through a favorable decision of the court.” Syl Pt. 5, *Findley v. State Farm Mut. Auto. Ins. Co.*, 213 W.Va. 80, 576 S.E.2d 807 (2002); Syl Pt. 6, *Harper v. Smith*, 232 W. Va. 655, 753 S.E.2d 612, 613 (2012); Syl Pt. 2, *Tabata v. Charleston Area Med. Ctr., Inc.*, 233 W. Va. 512, 759 S.E.2d 459, 461 (2014).

15. Further, “[s]tanding is a jurisdictional requirement that cannot be waived, and may be brought up at any time in a proceeding.” Franklin D. Cleckley, Robin J. Davis & Louis J. Palmer, Jr., *Litigation Handbook on West Virginia Rules of Civil Procedure* § 12(b), at 21 (Supp.2004) cited by *Bowyer v. Hi-Lad, Inc.*, 216 W. Va. 634, 655, 609 S.E.2d 895, 916 (2004).

16. The Supreme Court of Appeals explained the following in *Findley* with regard to the doctrine of standing:

“[s]tanding does not refer simply to a party's capacity to appear in court. Rather, standing is gauged by the specific common-law, statutory or constitutional claims that a party presents. “Typically, ... the standing inquiry requires careful judicial examination ... to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted.”

citing *International Primate Protection League v. Administrators of Tulane Educational Fund*, 500 U.S. 72, 77, 111 S.Ct. 1700, 1704, 114 L.Ed.2d 134, 143 (1991) (quoting *Allen v. Wright*, 468 U.S. 737, 752, 104 S.Ct. 3315, 3325, 82 L.Ed.2d 556, 570 (1984)) (emphasis in original) (additional citation omitted). Accord *Warth v. Seldin*, 422 U.S. 490, 498, 95 S.Ct. 2197, 2205, 45 L.Ed.2d 343, 354 (1975) (“In essence, the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.”). “In other words, when standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to request an adjudication of a particular issue[.]” *Flast v. Cohen*, 392 U.S. 83, 99–100, 88 S.Ct. 1942, 1952, 20 L.Ed.2d 947, 961 (1968) (footnote omitted). Accord *Louisiana Environmental Action Network v. Browner*, 87

F.3d 1379, 1382, 318 U.S.App. D.C. 370, 373 (1996) (“Our standing inquiry focuses on the appropriateness of a party bringing the questioned controversy to the court.”); *American Alternative Energy Partners II v. Windridge, Inc.*, 42 Cal.App.4th 551, 559, 49 Cal.Rptr.2d 686, 691 (1996) (“[S]tanding to sue—the real party in interest requirement—goes to the existence of a cause of action, *i.e.*, whether the plaintiff has a right to relief.”).

*Findley*, at 94–95, 821–22.

17. Here, MedTest submitted claims for reimbursement to Plaintiff. *See* Def’s Mot., p. 3; *see also* Am. Compl., ¶¶28-35. Plaintiff paid MedTest more than \$6 million in response to those claims. *See* Def’s Mot., p. 3; *see also* Am. Compl., ¶36. However, for MedTest’s claims relating to members of the Blue Cross Blue Shield Association (hereinafter “the Blues”) other than the West Virginia Blue, Plaintiff Highmark WV, the other out-of-state Blues reimbursed Plaintiff for amounts it paid to MedTest. *See* Def’s Mot., p. 3.

18. The MedTest Defendants have proffered evidence in their motion consisting of deposition testimony from Plaintiff’s corporate representative indicating that all of the total \$6,438,916.95 claimed as damages has been reimbursed by other Blues to Plaintiff, except for \$3,192.98, which he called “all but for the West Virginia members”. *Id.*; *see also* Def’s Mot., Ex. B. For this reason, the MedTest Defendants allege all but \$3,192.98 of the out-of-pocket losses alleged in the Amended Complaint were sustained by Blues other than Plaintiff. *See* Def’s Mot., p. 3.

19. In determining Plaintiff’s standing, if any, in light of this reimbursement, the Court must determine if Plaintiff has suffered an “injury in fact” that is “concrete and particularized” and “actual or imminent and not conjectural and hypothetical.” *See Men & Women Against Discrimination v. Family Prot. Servs. Bd.*, 229 W. Va. 55, 61, 725 S.E.2d 756, 762 (2011).

20. The West Virginia Supreme Court of Appeals explained in *Family Prot. Servs. Bd.* that “[i]n a seminal case governing standing, the United States Supreme Court explained that ‘[b]y particularized, we mean that the injury must affect the plaintiff in a personal and individual way.’” *Id.* at 61, 762. citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 n. 1, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).

21. Both MedTest Defendants and Plaintiff discuss *State ex rel. Healthport Techs., LLC v. Stucky*, 239 W. Va. 239, 800 S.E.2d 506 (2017) in their briefs to argue the standing issue in the instant case. *Healthport* involved the analysis of standing regarding a former patient seeking to pursue a claim against medical providers for allegedly excessive charges, paid solely by his lawyers, for copies of his medical records. *Id.* The Supreme Court in *Healthport* found that the plaintiff patient lacked standing because the patient did not pay the invoice to obtain the copies, patient had not reimbursed his lawyers, and his contract with his lawyers specified that he would only be liable for the expense of the medical records if he recovered from a medical malpractice defendant in another action, which the Court found to be conjectural. *Id.*

22. In *Healthport*, The Supreme Court put weight on the idea of a direct pocketbook injury, finding and relying on the fact that “the record demonstrate[d] that only [the plaintiff’s] lawyers have suffered an out-of-pocket expense caused by the alleged misdeeds of [Defendants]”. *Id.* at 243, 510.

23. Here, Plaintiff is the one who paid the over 6 million in monies now being sought as damages, and the evidence proffered shows that all but \$3,192.98 of these out-of-pocket losses alleged in the Amended Complaint were *later* reimbursed by the other Blues.

24. Although the MedTest Defendants argue that because of this reimbursement, Plaintiff suffered “no out-of-pocket losses for those claims”, the Court finds when analyzing the



issue of standing, a critical distinction is made between a third party directly paying a bill that was later the center of a civil action brought by another plaintiff, like in *Healthport*, versus a reimbursement at a later time pursuant to private agreement. Here, Plaintiff did initially have an out-of-pocket loss, notwithstanding the fact that it was later mostly reimbursed by other Blue Cross Blue Shield entities.

25. This is a critical distinction. The MedTest Defendants themselves argue in their motion that *Healthport*'s holding "squarely forecloses Highmark WV's attempt to recover payments that were ultimately made by others". See Def's Mot., p. 6. Here, the payments were not made by others – they were undisputedly made by Plaintiff. Instead, they were later mainly reimbursed by other Blues pursuant the Blue Cross Blue Shield entities' choice of business structure and private agreements.

26. Additionally, the Court notes that the evidence proffered, the testimony of Plaintiff's corporate designee, shows that if Plaintiff recovers the full amount in this litigation, it is obligated to remit the proceeds to those Blues who reimbursed. See Def's Mot., p. 4. However, importantly, the corporate designee explained that "Highmark West Virginia is the only and contractually responsible party for seeking the full 6 million and however many odd thousand dollar overpayment." *Id.* The Court considers judicial efficiency and practicality and notes it would be impractical for every single Blue who reimbursed Highmark WV to bring action against MedTest, when Highmark WV is the Blue entity who contracted with MedTest.

27. Further, the Court finds and concludes that Because the Court has determined that Plaintiff has standing under *Findley*, *Healthport*, and their progeny, an analysis of Rule 17(a) of the West Virginia Rules of Civil Procedure and its definition of real party in interest need not be conducted.

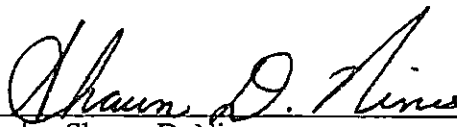
28. Instead, the Court finds and concludes that Plaintiff has standing and has demonstrated an injury-in-fact; therefore, it may proceed on its claim for damages as set forth in the Amended Complaint. The Court finds and concludes that later reimbursement by the other Blue entities via private agreement and business structure does not change the fact that Plaintiff has suffered a direct, pocketbook injury by paying the disputed amounts, and Plaintiff's standing is not precluded. Accordingly, Defendants' Motion for Partial Summary Judgment must be denied.

### CONCLUSION

**WHEREFORE**, it is hereby **ORDERED** and **ADJUDGED** that Defendants MedTest Laboratories, LLC, Billy Taylor, Brice Taylor, Michael Chen, Ph. D., James Taylor, Jr., Cenegen, LLC, and Vitas Laboratory's Motion for Partial Summary Judgment is hereby **DENIED**. The Court notes the objections of the parties to any adverse ruling herein.

The Clerk is directed to enter this Order as of the date first hereinabove appearing, and send attested copies to all counsel of record, as well as to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

ENTERED this 10<sup>th</sup> day of ~~April~~ <sup>June</sup> 2024.

  
Judge Shawn D. Nines  
West Virginia Business Court Division