

**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.

MEDTEST LABORATORIES LLC,

**Counterclaim and Third-Party
Plaintiff,**

vs.

HIGHMARK WEST VIRGINIA INC., et al.,

**Counterclaim and Third-Party
Defendants.**

ENTERED
D.B. No. _____
Page _____

MAY 26 2022

CELESTE RIDGWAY
CLERK CIRCUIT COURT

ORDER GRANTING PLAINTIFF'S MOTION FOR EVIDENTIARY HEARING

This matter came before the Court this 26th day of May 2022, upon Plaintiff Highmark West Virginia Inc.'s Motion for Evidentiary Hearing. Upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

FINDINGS OF FACT

1. On or about May 24, 2022, the instant Motion for Evidentiary Hearing was provided to the Court. Following pretrial rulings made by the Court at hearings before the undersigned on April 29, 2022 and May 18, 2022, and the settlement of claims against Defendant

Chen, Highmark submits that a jury trial is not a necessary path forward in resolving the remaining claims in this matter. *See Mot.*, p. 1-2. Instead, Plaintiff requests an evidentiary hearing on veil-piercing, as well as requested attorney's fees and punitive damages, and pre- and post-judgment interest.

2. On or about October 5, 2018, Highmark WV filed this civil action against MedTest Laboratories, LLC, Brice Taylor, Billy Taylor, Muhammad Amjad, Michael Chen, James Taylor, and Vitas Laboratory LLC. On September 13, 2019, Highmark WV amended its Complaint to add Cenegen, LLC (an owner of MedTest), as a defendant. *See Mot.*, p. 2.

3. Plaintiff has purported to the Court that Highmark WV named Brice Taylor, Billy Taylor, and James Taylor, Jr. (the "Member Defendants") in this action because they were known individual members or managers of the LLC Defendants, including MedTest. *Id.* Plaintiff has further purported to the Court that Highmark WV has settled its claims against Dr. Chen, MedTest's Laboratory Director, and he will stipulate and testify that MedTest was not a functioning laboratory during the relevant period it was claiming reimbursement from Highmark WV. MedTest's initial Laboratory Director, Dr. Amjad, has stipulated to liability on Highmark WV's claims against him. *Id.*

4. Because this Court has granted Highmark WV's Motion for Default Judgments against the LLC Defendants, the only parties left in this case for which Highmark WV has the burden of proving its claims are the Member Defendants. *Id.* at 2-3. Plaintiff has further purported to the Court that these remaining individuals are named in this lawsuit insofar as they have personal liability for the wrongful actions of MedTest, the vehicle used to perpetrate a fraud. *Id.* at 3. In naming the Member Defendants in this action, they were put on notice that Highmark WV intended to pursue veil piercing as a remedy to collect judgment against each as

members and alter egos of MedTest. *Id.*; *see also* Count VII of Highmark WV's Am. Compl. (Sept. 13, 2019). Following the entry of judgments against the LLC Defendants, the only remaining issue in this case is limited to whether—as a matter of law—judgment may attach to MedTest's members and managers. *Id.* This determination will fully resolve Highmark WV's claims. There are no facts in dispute from an underlying liability perspective. *Id.* The Court notes counsel for Brice Taylor and Billy Taylor do not object to having the remaining issues of damages and veil piercing brought before the bench, rather than the jury. *See* letter dated May 23, 2022, Ex. to instant motion.

5. The Court finds the issue ripe for adjudication.

CONCLUSIONS OF LAW

The instant motion seeks to bring the only remaining issue in this case – the Court's determinations of damages¹ and whether, as a matter of law, judgment may attach to MedTest's members and managers – before the bench rather than the jury. *See* Pl's Mot., p. 3. As such, the Court examines the relative law regarding veil-piercing.

As an initial matter, the Court finds it is black letter law in West Virginia that: "Piercing the corporate veil' is an equitable remedy, the propriety of which must be examined on an ad hoc basis." *Laya v. Erin Homes, Inc.*, 177 W.Va. 343, 347, 352 S.E.2d 93, 98 (1986).

The determination of whether to pierce the corporate veil is a fact intensive inquiry involving a number of relevant factors. *See Dailey v. Ayers Land Dev., LLC*, 241 W. Va. 404, 414, 825 S.E.2d 351, 361 (2019); *Laya v. Erin Homes, Inc.*, 177 W. Va. 343, 344, 352 S.E.2d 93, 94 (1986) ("The propriety of piercing the corporate veil should rarely be determined upon a motion for summary judgment. Instead, the

¹ The Court notes that it previously granted summary judgment for a sum certain regarding contract damages.

propriety of piercing the corporate veil usually involves numerous questions of fact for the trier of the facts to determine upon all of the evidence.”) *Mey v. Castle L. Grp., PC*, No. 5:19-CV-185, 2020 WL 3440566, at *4 (N.D.W. Va. June 23, 2020).

As an equitable remedy, veil-piercing is a determination for a judge and does not require a jury. *See Little v. Little*, 184 W. Va. 360, 362 (1990) (recognizing party is not entitled to jury to decide equitable issues); *see also Kinney Shoe Corp. v. Polan*, 939 F.2d 209, 211 (4th Cir. 1991) (“Piercing the corporate veil is an equitable remedy[.]”); *Int’l Fin. Servs. Corp. v. Chromas Techs. Canada, Inc.*, 356 F.3d 731, 735 (7th Cir. 2004) (“Even when a plaintiff is entitled to a jury trial on his legal claims, the district court must nonetheless make an independent judgment as to any equitable issue.”); *United States v. Andrews*, 146 F.3d 933, 940 (D.C. Cir. 1998) (“[P]iercing the corporate veil is an equitable remedy, whose exercise is subject to the sound discretion of the trial judge.”); *Heisz v. Galt Indus., Inc.*, 93 So. 3d 918, 929 (Ala. 2012) (“Whether the corporate veil of a business entity should be pierced is a matter of equity, properly decided by a judge after a jury has resolved the accompanying legal issues.”).

“ ‘[T]o “pierce the corporate veil” in order to hold the shareholder(s) actively participating in the operation of the business personally liable ..., there is normally a two-prong test: (1) there must be such unity of interest and ownership that the separate personalities of the corporation and of the individual shareholder(s) no longer exist (a disregard of formalities requirement) and (2) an inequitable result would occur if the acts are treated as those of the corporation alone (a fairness requirement).’ Syllabus point 3, in part, *Laya v. Erin Homes, Inc.*, 177 W.Va. 343, 352 S.E.2d 93 (1986).” Syl. Pt. 6, *Kubican v. The Tavern, LLC*, 232 W.Va. 268, 752 S.E.2d 299 (2013); *cited by Dailey v. Ayers Land Dev., LLC*, 241 W. Va. 404, 825 S.E.2d 351, 353 (2019).

The Supreme Court of Appeals of West Virginia stated in *Kubican v. The Tavern, LLC* that it “will consider West Virginia common law standards for piercing the corporate veil in order to establish guidance for lower courts deciding whether to pierce the veil of an LLC.” *Kubican v. The Tavern, LLC*, 232 W. Va. 268, 280, 752 S.E.2d 299, 311 (2013). The Court considers *Kubican*’s analysis of other cases and other jurisdictions repeatedly reads “other courts”, which support the tenant that veil piercing is appropriate for a court determination via evidentiary hearing, rather than a jury determination and verdict. *See, Kubican*.

The Court considers 2022 Senate Bill 6, an amendment to § 31B–3–303, which governs liability of members and managers, specifically mentioned that it seeks to establish the intent and policy of the Legislature to modify the applicability of “corporate veil piercing” analysis adopted in *Joseph Kubican v. The Tavern, LLC*, 232 W.Va. 268, 752 S.E.2d 299 (2013). WV LEGIS S.B. 6 (2022), 2022 West Virginia Laws S.B. 6 (West's No. 167). Further, in specifically mentioning the *Kubican* case and specifically addressing the analysis set forth in *Kubican v. The Tavern, LLC*, Senate Bill 6 acknowledges and mentions that it is “for court to apply “corporate veil piercing analysis”... WV LEGIS S.B. 6 (2022), 2022 West Virginia Laws S.B. 6 (West's No. 167) (emphasis added).

The Court examines *Dailey v. Ayers Land Dev., LLC*, 241 W. Va. 404, 415 (2019), wherein the Supreme Court of Appeals of West Virginia stated that the issue of whether to pierce the corporate veil can be “a matter for the jury” and was disposed of improperly on summary judgment by the circuit court. *See Dailey v. Ayers Land Dev., LLC*, 241 W. Va. 404, 415 (2019). Importantly, in that case, the circuit court found there was no genuine issue of material fact to pierce the veil of various defendants on summary judgment, without holding a hearing. *Id.* The

Supreme Court in *Ayers* remanded the matter, finding it was not an appropriate decision on a motion for summary judgment in that case. *Id.*

This Court considers that *Ayers* did use the term “for the jury” in remanding the veil-piercing and joint venture claims at issue in that case. The Court also considers the cases that have explicitly held the veil piercing was a matter for court determination and provided guidance for the courts, such as *Kubican* and *Laya*. The Court also considers the fact that the Supreme Court in *Ayers* did not overturn or negatively distinguish *Kubican* and *Laya*; in fact, it cited those cases for the tenants of law they stand for in West Virginia’s veil-piercing juris prudence.

Accordingly, in considering all the relevant West Virginia law, including cases that have come out subsequent to *Ayers* and have cited *Ayers*, and federal cases in Northern and Southern Districts of West Virginia applying West Virginia law regarding veil-piercing, this Court concludes that based on differences in this case and *Ayers* and in still being consistent with *Kubican* and *Laya*, the matter should be decided by the Court upon an evidentiary hearing². As such, this Court finds and concludes that the veil-piercing analysis is appropriate for court determination at an evidentiary hearing. The Court considers the Supreme Court’s guidance in *Ayers* in determining this issue is appropriate for determination before this Court via evidentiary hearing, and not upon briefs/motions practice.

Therefore, the Court finds and concludes that the issue of whether MedTest's LLC veil applies or may be pierced such that Highmark WV may impute its judgment against the Member Defendants and all other members and managers of MedTest, shall be brought before this Court. The Court further notes that no party objects to that approach. *See* Pl’s Mot., p. 9.

² Significantly, the Court notes no evidentiary hearing was held in *Ayres*.

Accordingly, the instant motion is hereby granted. The evidentiary hearing to determine whether Highmark WV's judgments against MedTest may be imputed to its members and managers through veil piercing shall be held June 1, 2022, at 9:30 a.m. in Judge Waters's Courtroom in the Wood County Judicial Building, 2 Government Square, Parkersburg, West Virginia, 26101 before the undersigned.

CONCLUSION

Accordingly, it is hereby **ADJUDGED** and **ORDERED** that Plaintiff Highmark West Virginia Inc.'s Motion for Evidentiary Hearing is hereby **GRANTED**.

This Court **DIRECTS** the Clerk to enter this Order and forward attested copies to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia 25401, as well as to the parties and counsel listed below.

IT IS SO ORDERED.

ENTERED this 26th day of May, 2022.



**JUDGE SHAWN D. NINES
JUDGE OF THE WEST VIRGINIA
BUSINESS COURT DIVISION**

Forward attested copies to:

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Counsel for Plaintiff Highmark West Virginia Inc.

STATE OF WEST VIRGINIA
COUNTY OF WOOD, TO-WIT:

I, CELESTE RIDGWAY, CLERK OF THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA, HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND COMPLETE COPY OF AN ORDER ENTERED IN SAID COURT, ON THE 26 DAY OF May, 2022, AS FULLY AS THE SAME APPEARS TO ME OF RECORD. GIVEN UNDER MY HAND AND SEAL OF SAID CIRCUIT COURT, THIS 27 DAY OF MAY, 2022.

Celeste Ridgway

CLERK OF THE CIRCUIT COURT OF
WOOD COUNTY, WEST VIRGINIA

BY: 

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