

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

HIGHMARK WEST VIRGINIA INC.,

Plaintiff

v.

CIVIL ACTION NO. 18-C-271

Presiding Judge: Shawn D. Nines

Resolution Judge: Christopher Wilkes

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

Defendants.

MEDTEST LABORATORIES, LLC,

Counterclaim and Third-Party Plaintiff,

v.

HIGHMARK WEST VIRGINIA INC., et al.,

Counterclaim and Third-Party Defendants.

ENTERED
C.B. No. _____
Page _____

MAY 26 2022

CELESTE RIDGWAY
CLERK CIRCUIT COURT

**ORDER GRANTING PLAINTIFF HIGHMARK WEST VIRGINIA INC.'S
MOTION FOR A SUMMARY JUDGMENT ON ITS BREACH OF CONTRACT CLAIM
AGAINST DEFENDANT MEDTEST LABORATORIES, LLC**

On the 29th day of April, 2022, Plaintiff Highmark West Virginia Inc. ("Highmark WV"), by counsel Stuart A. McMillan, Esq. and Peter G. Markham, Esq. of Bowles Rice LLP, presented for oral argument Highmark WV's Motion for a Summary Judgment on its Breach of Contract Claim Against Defendant MedTest Laboratories, LLC ("MedTest"). Highmark WV presented the Motion in connection with the Pre-Trial Conference in this action. Defendants James ("Jimbo") Taylor, Jr. and Brice Taylor appeared at the Pre-Trial Conference *pro se*. Scott H.

Kaminski, Esq. of Ray, Winton & Kelley PLLC appeared on behalf of defendant Michael Chen, Ph. D. Defendants MedTest, Cenegen, LLC (“Cenegen”), Vitas Laboratory LLC (“Vitas”), and Muhammad Amjad, Ph. D. did not participate in the Pre-Trial Conference. MedTest, moreover, did not file a response contesting the Motion.

After having considered the Motion and its exhibits, Highmark WV’s corresponding Memorandum of Law, the pertinent authorities, and the arguments of counsel, this Court hereby **GRANTS** the Motion and makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On August 15, 2016, Highmark WV entered into a Network Agreement with MedTest, an independent laboratory provider in Putnam County, West Virginia. *See generally* Network Agreement.
2. In the Network Agreement, Highmark WV agrees to reimburse MedTest for providing covered laboratory services to covered persons. *Id.* at § I., ¶ A.
3. The Network Agreement requires MedTest to submit its claims for reimbursement in accordance with the requirements of Highmark WV’s Provider Manual and electronic claims submission program. *Id.* at § III., ¶ A.
4. The Network Agreement requires MedTest to “keep accurate and current medical records” for each person on whose behalf MedTest submits a claim for reimbursement, and to furnish those records to Highmark WV “without alteration” upon request by Highmark WV. *Id.* at § IV., ¶ A.

5. The Network Agreement provides that “[s]tatements made in any claim submitted to Highmark WV” shall be considered statements made by MedTest, whether prepared by MedTest directly or by an agent. *Id.* at § VI., ¶ E.

6. The Network Agreement states that it “is for the sole and exclusive benefit” of Highmark WV and MedTest and “is not intended to, nor does it, confer any benefit upon any third party.” *Id.* at § VI., ¶ CC.

7. Highmark WV’s Provider Manual provides specific instructions to contracted providers—such as MedTest—for coding and claiming reimbursement. *See generally* Provider Manual, Chapter 5, Unit 4 (Feb. 2016). Claims must be coded accurately to reflect, among other things, the identity of the rendering provider by referencing its 10-digit National Provider Identifier (“NPI”). Claims also must accurately reflect the place of service for each service rendered by referencing a 2-digit, industry standard “POS Code” developed by the Centers for Medicare and Medicaid Services. The POS Code list requires laboratories “certified to perform diagnostic and/or clinical tests independent of an institution or physician’s office” to use Code 81 in submitting claims for reimbursement.

8. The Provider Manual expressly prohibits the practice of “pass-through billing,” *i.e.*, claiming reimbursement for tests a provider does not render. *See* Provider Manual at § 6.4 (Aug. 2016).

9. This Court finds—based on admissions by MedTest, the testimony of Highmark WV Rule 30(b)(7) corporate designee Megan Kent, and the testimony of defendant Amjad—that MedTest claimed and secured reimbursement from Highmark WV for laboratory services MedTest did render. This Court further finds that this conduct occurred throughout the duration of the Network Agreement, between August 15, 2016, and October 5, 2018.

10. This Court finds—based on admissions by MedTest, the testimony of defendant Billy Taylor, and Highmark WV’s Amended Expert Witness Disclosure—that MedTest coded the claims for reimbursement using its unique NPI, which misrepresented to Highmark WV that MedTest rendered the laboratory services.

11. This Court finds—based on admissions by MedTest, the testimony of Ms. Kent, and the testimony of witness Kristin Cumbie—that MedTest coded the claims for reimbursement with the false and misleading POS Code 11, rather than the POS Code applicable to independent laboratories (POS Code 81).

12. This Court finds—based on the testimony of defendant Amjad, the testimony of Ms. Kent, and records produced by defendant Amjad in discovery—that MedTest claimed and secured reimbursement for services for which there were no underlying medical records.

13. This Court finds—based on admissions by MedTest, the testimony of Ms. Kent, the testimony of defendant Amjad, the testimony of witness Angela Taylor, and the testimony of Ms. Cumbie—that MedTest claimed reimbursement on behalf of undisclosed, out-of-state, out-of-network laboratories that lacked the required contracts and credentials to seek reimbursement from Highmark WV directly.

14. This Court finds—based on the testimony of Ms. Kent, records obtained by Highmark WV in a review of MedTest’s claims for reimbursement, and the testimony of Ms. Cumbie—that MedTest altered medical records by affixing a MedTest logo stamp or sticker to them, for purposes of giving Highmark WV the impression that MedTest rendered services when it did not.

15. This Court finds—based on the testimony of Ms. Kent and records of a site inspection of MedTest that was conducted by Highmark WV’s investigators—that MedTest was not a legitimate, functioning laboratory.

16. Furthermore, this Court finds that MedTest claimed and secured \$6,481,765.94 in reimbursement from Highmark WV for services MedTest did not render, according to the *uncontested* evidence accompanying Highmark WV’s Motion. The Court considers that no party provided a response or objection to the instant motion. The Court considered evidence contained in the entire record, including the exhibits accompanying Highmark’s motion, the Complaint, and importantly, the verified affidavit of Kurt Spear, Vice President of Financial Investigations and Provider Review for Highmark West Virginia, which was filed in the court file on May 16, 2022 as Exhibit A to Plaintiff’s Motion for Default Judgments¹.

CONCLUSIONS OF LAW

17. A contract is an agreement between two or more parties in which each promise to do something that has value, in exchange for the promise of the other parties. Restatement (Second) of Contracts § 1; *see also* W. Va. Pattern Jury Instructions § 1101. The promises are in “consideration” of one another, and mutual consideration is essential to a valid contract. *Id.* This Court concludes that the Network Agreement between Highmark WV and MedTest is a binding contract, as MedTest promised to render covered laboratory services to covered persons in Putnam County in exchange for Highmark WV’s promise to reimburse for those services.

¹ The Court notes that the motion for default judgments was essentially filed contemporaneously with the proposed order on the instant summary judgment motion, as both motions and issues were argued at the Pretrial Hearing held on April 29, 2022 before the undersigned, and undersigned directed counsel to provide both at said April 29 Hearing. As such, the Court considers all the evidence in the record in rendering its decision on this sum certain.

18. Under West Virginia law, a party breaches a contract when it fails to do something it is obligated by the contract to do. A breach of contract is material if it causes damages or deprives the other party of a substantial benefit that it reasonably expected to receive under the terms of the contract. *Sneberger v. Morrison*, 776 S.E.2d 156, 171 (W. Va. 2015); *see also* W. Va. Pattern Jury Instructions § 1111 (Material Breach of Contract).

19. Based on the undisputed findings of fact identified above, this Court concludes that MedTest materially breached its Network Agreement with Highmark WV by:

- Claiming reimbursement from Highmark WV for laboratory services MedTest did not render;
- Coding the claims falsely and misleadingly using MedTest's unique NPI to indicate that MedTest rendered covered laboratory services (when it did not);
- Coding the claims falsely and misleadingly with the incorrect POS Code 11 to indicate that covered laboratory services were rendered at a health care provider's office in Putnam County, West Virginia, when they instead were rendered (if at all) at out-of-state laboratories;
- Claiming reimbursement on behalf of undisclosed, out-of-state, out-of-network laboratories that lacked the required contracts and credentials to seek reimbursement from Highmark WV directly;
- Claiming reimbursement for laboratory services that were not supported by medical orders or medical records; and
- Providing altered medical records to Highmark WV in response to its review and investigation of MedTest's claims.

20. This Court further concludes that Highmark WV sustained damages because of MedTest's material breaches of the Network Agreement. Specifically, the *uncontested* material facts show that MedTest secured and retained \$6,481,765.94 from Highmark WV in claiming reimbursement for laboratory services MedTest did not render.


21. Summary judgment is appropriate where “there is no genuine issue as to any material fact” and “the moving party is entitled to a judgment as a matter of law.” W. Va. R. Civ. P. 56(c); *see also* Syl. Pt. 1, *Gillespie v. City of Charleston*, 177 S.E.2d 354 (W. Va. 1970).

WHEREFORE, in view of the foregoing Findings of Fact and Conclusions of Law, this Court hereby **GRANTS** Highmark WV’s Motion for A Summary Judgment on its Breach of Contract Claim against MedTest, and **DIRECTS** the Clerk to enter judgment against MedTest in the amount of \$6,481,765.94. The Court will take up the issue of pre and post judgment interest at the evidentiary hearing on veil piercing.

The Court notes the exceptions and objections of all parties to any adverse rulings. 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.

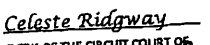
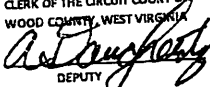

JUDGE SHAWN D. NINES
JUDGE OF THE WEST VIRGINIA
BUSINESS COURT DIVISION

Forward attested copies to:

Stuart A. McMillan, Esq.
Peter G. Markham, Esq.
Gabriele Wohl, Esq.
BOWLES RICE LLP
600 Quarrier Street
Charleston, West Virginia 25301
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: 
DEPUTY

Billy Taylor
Washington County Detention Center
1155 W Clydesdale Drive
Fayetteville, Arkansas 72701
Defendant, Pro Se

MedTest Laboratories, LLC
c/o Billy Taylor
Washington County Detention Center
1155 W Clydesdale Drive
Fayetteville, Arkansas 72701
Defendant

Vitas Laboratory, LLC
c/o Billy Taylor
Washington County Detention Center
1155 W Clydesdale Drive
Fayetteville, Arkansas 72701
Defendant

James Taylor, Jr.
4608 NE 93rd Place
Oklahoma City, Oklahoma 73131
Jimbotaylor1@gmail.com
Defendant, Pro Se

Brice Taylor
861 E 33rd Street
Edmund, OK 73103
Bricetaylor62@gmail.com
Defendant, Pro Se

Cenegen, LLC
861 E 33rd Street
Edmund, Oklahoma 73103
Bricetaylor62@gmail.com
Defendant

Scott H. Kaminski, Esquire
RAY, WINTON & KELLEY, PLLC
109 Capitol St., Ste. 700
Charleston, West Virginia 25301
scottkaminski@rwk-law.com
Counsel for Defendant Michael Chen, Ph.D.

Muhammad Amjad, Ph.D.
2006 Springdale Road
Hurricane, West Virginia 25526
Amjad.ca@hotmail.com
Defendant, Pro Se