

**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
D.S. No. _____
Page _____

MAY 26 2022

CELESTE RIDGWAY
CLERK OF CIRCUIT COURT

**ORDER GRANTING PLAINTIFF HIGHMARK WEST VIRGINIA INC.'S MOTION
FOR DEFAULT JUDGMENTS AGAINST THE LIMITED LIABILITY COMPANY
DEFENDANTS**

Plaintiff Highmark West Virginia Inc. made an oral Motion for Default Judgments against the following limited liability company defendants in this matter: MedTest Laboratories, LLC, Cenegen, LLC, and Vitas Laboratory, LLC during its Pre-Trial Conference of April 29, 2022. The Court directed Plaintiff to file a written motion for default judgments. Stuart A. McMillan, Esq. and Peter G. Markham, Esq. of Bowles Rice LLP advanced the Motion as attorneys of record for plaintiff Highmark West Virginia Inc. ("Highmark WV"). Said written

motion was provided to the Court on or about May 12, 2022 and is filed in the court file May 16, 2022.

Having considered the Motion, its Exhibit, the verified affidavit of Kurt Spear, the Motion's supporting Memorandum of Law, the pertinent authorities, and the arguments of Highmark WV's counsel, this Court **GRANTS** the Motion and makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. 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. Highmark WV's specific claims against MedTest sound in Fraudulent Misrepresentation & Inducement (Count I); Breach of Contract (Count II); Unjust Enrichment (Count III); Civil Conspiracy (Count IV); Joint Venture (Count V); and Negligence (Count VI). *Id.* Additionally, Highmark WV alleges it should be afforded the equitable remedy of Piercing the MedTest LLC Veil (Count VII) to shift liability to MedTest's members and managers because it was not a legitimate LLC and was used by the members and managers solely as a vehicle for carrying-out a fraudulent billing scheme. *Id.* Highmark WV claims that Cenegen and Vitas assisted MedTest in devising and carrying out the fraudulent billing scheme, and that these LLCs are liable for Civil Conspiracy (Count IV) and Joint Venture (Count V). *Id.*

2. On or about May 12, 2022, Plaintiff filed the instant motion pursuant to W. Va. R. Civ. P. 55(b)(2), moving this Court to order the entry of default judgments against the following limited liability company ("LLC") defendants in this action: MedTest Laboratories, LLC ("MedTest"), Cenegen, LLC ("Cenegen"), and Vitas Laboratory LLC ("Vitas")(collectively, the "LLC Defendants"), arguing default judgments should be entered because they have failed to defend this action and have

violated several orders of this Court. *See* Pl's Mot., p 1-2. The Court notes the instant motion included a verified affidavit of Kurt Spear, Vice President of Financial Investigations and Provider Review for Highmark, attached as Exhibit A.

3. The Court notes counsel previously made an oral motion for default judgment at a hearing April 29, 2022. The MedTest Defendants have not opposed the instant motion, either at the hearing or in writing.

4. The Court finds now the issue is ripe for adjudication.

CONCLUSIONS OF LAW

Motions for default judgment are governed by Rule 55 of the West Virginia Rules of Civil Procedure. Rule 55(a) provides that:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

W. Va. R. Civ. P. 55(a).

Additionally, Rule 55(b)(1) dictates cases where the amount sued for is a sum certain or which can be rendered certain by computation. *Coury v. Tsapis*, 172 W. Va. 103, 105, 304 S.E.2d 7, 9 (1983). Rule 55(b)(1) states, in pertinent part: "When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the court upon the request of the plaintiff and upon affidavit of the amount due shall direct the entry of judgment by the clerk for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear...". W. Va. R. Civ. P. 55(b). The term "sum certain" contemplates a situation where the amount due cannot be reasonably disputed, is settled with respect to amount, ascertained and agreed upon by the parties, or fixed by operation of law. Typical "sum certain" situations include: actions on money judgments, negotiable instruments, or similar actions where the

damages can be determined without resort to extrinsic proof. *Farm Family Mut. Ins. Co. v. Thorn Lumber Co.*, 202 W. Va. 69, 501 S.E.2d 786 (1998).

Although the LLC Defendants previously had counsel, the Court considers that the LLC Defendants, moreover, have not engaged legal representation licensed in West Virginia as required by West Virginia law and as ordered by this Court, and they did not participate in the Pre-Trial briefing and information exchange requirements of this Court's Second Scheduling Order. Further, the LLC Defendants did not appear at the Pre-Trial Conference, even though this Court gave them notice that their failure to participate in the defense of this action could result in the entry of default judgments. *See* Ord., 3/18/22.

Additionally, LLC Defendant MedTest alleged a counterclaim against Highmark WV for Breach of Contract and asserted, in the alternative, "mirror image" counterclaims against Highmark WV and other Blue Cross Blue Shield plans for Negligence, Fraudulent Misrepresentation and Inducement, Civil Conspiracy, Joint Venture and Unjust Enrichment. *See* MedTest's First Am. Counterclaims and Third-Party Compl. (Sept. 13, 2019). Despite alleging these counterclaims, MedTest did not develop and pursue them in discovery.

The Court finds that MedTest failed to respond to Highmark WV's pending Motion for Summary Judgment against MedTest and failed to participate in the deposition of its Laboratory Director, co-defendant Michael Chen, Ph. D. As Highmark WV also demonstrated in previously moving to compel and moving for sanctions, MedTest also abused the discovery process and failed to produce documents requested in discovery (or certify that the documents do not exist). The LLC Defendants failed to participate in the Pre-Trial Briefing and information exchanges required by this Court's Second Scheduling Order. The LLC Defendants failed to participate in the Pre-Trial Conference this Court held on April 29, 2022, also in violation of the Second Scheduling Order. The

LLC Defendants are not actively defending this action and have not actively defended this action since October 2021.

Plaintiff seek damages in the total amount of \$6,481,765.94, as supported by the verified affidavit of Kurt Spear, attached to the instant motion. Here, the affidavit presented in this matter verify the \$6,481,765.94 as amount due. Accordingly, the Court finds and concludes that with respect to the claims Highmark WV alleges against the LLC Defendants in the Amended Complaint, Highmark WV's compensatory damages total \$6,481,765.94. This figure represents the total amount that Highmark WV paid to MedTest on its false and misleading claims for reimbursement in 2016, 2017, and 2018. MedTest has not refunded the \$6,481,765.94 to Highmark WV. See Exhibit A, Aff d of Kurt Spear (May 12, 2022) at ¶¶ 3-5.

WHEREFORE, in view of the foregoing, this Court should order the entry of default against the LLC Defendants and award Highmark WV judgment on its claims, judgment on MedTest's counterclaims, and compensatory damages in the amount of \$6,481,765.94. The Court will take the issue of pre-judgment interest and post-judgment interest at the evidentiary hearing it holding June 1, 2022 on veil-piercing. *See* Ord., 5/26/22.

The Court notes and considers that it awarded summary judgment against MedTest and for Plaintiff on Plaintiff's breach of contract claim against MedTest, to which MedTest did not oppose. In granting this motion, the Court awarded \$6,481,765.94 in contract damages against MedTest and for Plaintiff. The Court clarifies and directs that this default judgment ruling applies to any issues and causes of action not provided for in the summary judgment order, which the Court notes did not involve the other LLC Defendants, Vitas and Cenegen, and only involved Plaintiff's breach of contract count.

CONCLUSION

WHEREFORE, in view of the foregoing, it is further **ADJUDGED AND ORDERED** that this Court hereby **GRANTS** Plaintiff Highmark West Virginia Inc.'s Motion for Default Judgments Against the Limited Liability Defendants. It is further hereby **ADJUDGED** and **ORDERED** that judgment be **GRANTED** against Defendants MedTest Laboratories, LLC, Cenegen, LLC, and Vitas Laboratory LLC, and in favor of Plaintiff in the amount of \$6,481,765.94.

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
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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: A. Dougherty
DEPUTY

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