

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

HIGHMARK WEST VIRGINIA, INC.,

Plaintiff,

CIVIL ACTION NO.: 18-C-271

Presiding Judge: Shawn D. Nines

Resolution Judge: Christopher Wilkes

v.

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

Defendants.

and

MEDTEST LABORATORIES, LLC,

Counterclaim and Third-Party Plaintiff,

v.

HIGHMARK WEST VIRGINIA, INC., et al.,

Counterclaim and Third-Party Defendants.

FINAL ORDER REGARDING VEIL PIERCING CAUSE OF ACTION

On a previous day, upon the evidentiary hearing held by this Court in order to consider the corporate veil piercing cause of action asserted by Plaintiff in this civil action.

On June 1, 2022, the Court held an evidentiary hearing on the issue of corporate veil piercing. Plaintiff Highmark West Virginia Inc. ("Plaintiff") appeared by counsel Stuart McMillan and Gabrielle Wohl of Bowles Rice LLP, Defendants Brice Taylor and James Taylor ("the Taylors") appeared by counsel Arie M. Spitz, Esha S. Simon, and Cassandra L. Harkins of Dinsmore & Shohl LLP, and

Defendant Billy Taylor, *pro se*, did not appear. The Court notes that as to Defendants MedTest, Cenegen, and Vitas, on May 26, 2022, this Court granted Default Judgment and Summary Judgment in favor of Highmark against MedTest, Cenegen, and Vitas Laboratories in the amount of \$6,481,765.94. *See* Orders Granting Default and Summary Judgment, entered May 26, 2022. The Court further notes that as to Defendant Muhammad Amjad, Ph.D., Defendant entered into a Consent Decree and binding stipulation with Plaintiff. *See* Order Regarding Consent Decree, entered May 12, 2022. The Court further notes that as to Defendant Michael Chen, Ph.D., Plaintiff settled its claims against Defendant Chen. *See* Order Granting Plaintiff's Motion for Evidentiary Hearing, entered May 26, 2022, ¶3.

FINDINGS OF FACT AND/OR CONCLUSIONS OF LAW

1. On September 13, 2019, Highmark served its Amended Complaint. The Amended Complaint named Defendant MedTest, LLC (hereinafter "MedTest"), Defendant Cenegen, LLC, (hereinafter "Cenegen"), and Defendant Vitas Laboratory, LLC (hereinafter "Vitas") as corporate defendants. *See* Amended Complaint. The Court notes the Amended Complaint, however, only seeks to pierce the corporate veil of MedTest. *See* Amended Complaint at ¶¶ 71-82. The Amended Complaint does not request piercing of the corporate veils of any other corporate entity or Defendant. *See* Amended Complaint.

2. On May 26, 2022, this Court granted Default Judgment and Summary Judgment in favor of Highmark against MedTest, Cenegen, and Vitas Laboratories in the amount of \$6,481,765.94. *See* Orders Granting Default and Summary Judgment, entered May 26, 2022.

3. Also on May 26, 2022, this Court granted Highmark's Motion for Evidentiary Hearing and set a hearing for June 1, 2022 in order to determine "whether Highmark WV's judgments against MedTest may be imputed to its members and managers through veil piercing." Order Granting Motion for Evidentiary Hearing, entered May 26, 2022, at Pg 7. Specifically, this Court Ordered 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 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 on June 1, 2022." Order Granting Plaintiff's Motion for Evidentiary Hearing, entered May 26, 2022, at Pg 6-7.

4. The evidentiary hearing was held from June 1-2, 2022.

5. The Court finds the issue is now ripe for consideration.

6. West Virginia statutes permit the equitable remedy of piercing the veil to be asserted against a West Virginia limited liability company. W. Va. Code Ann. § 31B-3-303; *Dailey v. Ayers Land Dev., LLC*, 241 W. Va. 404, 825 S.E.2d 351 (2019). The Court is tasked with evaluating the piercing of the corporate veil as to Defendant MedTest, LLC, a limited liability company.

7. As stated above, the Amended Complaint brought a veil piercing cause of action against MedTest, and brought no veil-piercing cause of action against any other entity. Further, in its Order Granting Plaintiff's Motion for Evidentiary Hearing, the Court found the following: "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". See Order Granting Plaintiff's Motion for Evidentiary Hearing, entered May 26, 2022, ¶3. Also, the Court found: "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. 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 perpetuate a fraud. 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.*, ¶4 (*citing* Amended Complaint, Count VII) (emphasis added). Therefore, the Court notes that it is tasked with evaluating veil-piercing as to MedTest, with the burden being on Highmark WV to prove that veil-piercing is appropriate.

Member-Managed vs. Manager-Managed LLC's

8. As an initial matter, this Court analyzes the status of the parties in a member managed West Virginia Limited Liability Company, versus a manager managed West Virginia Limited Liability Company.

West Virginia Code, in pertinent part, provides the following definitions of regarding members and managers within the context of a LLC:

(13) "Manager" means a person, whether or not a member of a manager-managed company, who is vested with authority under section 3-301.

(14) "Manager-managed company" means a limited liability company which is so designated in its articles of organization.

(15) "Member-managed company" means a limited liability company other than a manager-managed company.

W. Va. Code Ann. § 31B-1-101 (West).

During the evidentiary hearing, counsel for Defendant Brice Taylor and Defendant James Taylor (hereinafter "Defendants" or "the Taylors") admitted into evidence, without objection, MedTest's articles of organization as Defendants' Exhibit 1-B. *See* Hearing Transcript Vol 1 at Pg 173-176. Based upon these records, which were the only evidence admitted during the hearing pertaining to the corporate organization of MedTest, the Court finds that MedTest is a member managed West Virginia limited liability company.

Next, with respect to the members of MedTest, the Court considers the evidence presented at the hearing. This Court finds that under West Virginia Code, a West Virginia limited liability company is created upon the filing of the articles of organization with the West Virginia Secretary of

State. W. Va. Code § 31B-2-202. For a filing to be complete and accepted, the organizers must list all of the members of the LLC in the articles of organization. *Id.* Only those members on the official records are the members of LLC. *Id.* See also *Ne. Nat. Energy LLC v. Larson*, No. 3:18-CV-240, 2019 WL 6311101, at *2 (W.D. Pa. Nov. 25, 2019).

Here, importantly, the members listed on the articles of incorporation are Muhammad Amjad, Ph.D. and Prabhaker Reddy, MD. See Def's Ex. 1-B. Further, the sole evidence offered by Highmark as to the identities of the alleged additional members of MedTest was MedTest's Answer to Interrogatory No. 4 of Highmark's First Set of Discovery Requests, admitted as Plaintiff's Exhibit 10, which alleged the following were members of MedTest at various times: Dr. Muhammad Amjad, Dr. Prabhaker Reddy, Cenegen, LLC, CeneTech, Inc., and Dooley, Inc.¹ Although the Court recognizes this is a verified interrogatory answer, the Court was not presented evidence of corporate documents, or documents filed with the Secretary of State, supporting the interrogatory answer that these individuals and entities were at various times members of MedTest, let alone that they were members during the period of time that the fraudulent billing at the heart of this litigation took place. The Court finds the evidence explicitly shows that the members of MedTest were Muhammad Amjad, Ph.D. and Prabhaker Reddy, MD. See Def's Ex. 1-B.

Chapter 31B of the West Virginia Code governs the limited liability companies, as it is titled the Uniform Limited Liability Company Act. W. Va. Code § 31B-3-303 governs the liability of members and managers. Pursuant to W. Va. Code § 31B-3-303(a), "[a] member or manager is not personally liable for a debt, obligation or liability of the company solely by reason of being or acting as a member or

¹ The Court notes that during the hearing, Highmark proffered evidence as to the ownership of Cenegen, LLC (in Plaintiff's Exhibit 10); specifically, that Cenegen's members include Brice Taylor and T4 Holdings, LLC (and that James Taylor is a member of T4 Holdings). See Plaintiff's Exhibit 10. Highmark did not proffer any evidence as to the ownership of Vitas Laboratories.

manager.” However, “W. Va. Code § 31B-3-303 (1996) (Repl. Vol. 2009) permits the equitable remedy of piercing the veil to be asserted against a West Virginia limited liability company.” Syl. Pt. 5, *Kubican v. Tavern, LLC*, 232 W. Va. 268, 752 S.E.2d 299 (2013).

To pierce the veil of a limited liability company in order to impose personal liability on its member(s) or manager(s), it must be established that (1) there exists such unity of interest and ownership that the separate personalities of the business and of the individual member(s) or managers(s) no longer exist and (2) fraud, injustice, or an inequitable result would occur if the veil is not pierced. This is a fact driven analysis that must be applied on a case-by-case basis, and, pursuant to W. Va. Code § 31B-3-303(b) (1996) (Repl. Vol. 2009), the failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business may not be a ground for imposing personal liability on the member(s) or manager(s) of the company.

Syl. Pt. 7, *Kubican*, 232 W. Va. 268, 752 S.E.2d 299 (emphasis added).

Finally, pursuant to W. Va. Code § 31B-1-101(13), the “manager” of an LLC is “a person, whether or not a member of a *manager-managed* company, who is vested with authority under section 3-301 [§ 31B-3-301].” (emphasis added).

First, the evidence at the hearing, namely the articles of incorporation, explicitly established MedTest is a member managed LLC. *Id.* So, pursuant to W. Va. Code § 31B-1-101(13), there are no managers of MedTest.

Second, pursuant to *Kubican*, piercing the corporate veil of MedTest would impose liability for the debts of MedTest (in this case the judgment against MedTest) upon the members and managers of MedTest. The Court has found above that evidence explicitly shows that the members of MedTest were Muhammad Amjad, Ph.D. and Prabhaker Reddy, MD. *See* Def’s Ex. 1-B. Even if the Court were inclined to consider the interrogatory answer compelling evidence, give it great weight, and make a finding that the members of MedTest, at various times, consist of: Dr. Muhammad Amjad, Dr. Prabhaker Reddy, Cenegen, LLC, CeneTech, Inc., and Dooley, Inc., Defendants Billy Taylor, Brice Taylor, and James Taylor would not be members of MedTest. As stated above, there are no managers of MedTest.

Therefore, the Court finds that Defendants Billy Taylor, Brice Taylor, and James Taylor are not members or managers of MedTest; therefore, piercing the corporate veil of MedTest cannot impose personal liability upon them.

Veil-Piercing Analysis of Other Business Entities

9. The Court again notes that the evidentiary hearing and the cause of action in the Complaint in the instant civil action was as to the veil piercing of MedTest LLC only. At the conclusion of the hearing, counsel for Highmark asked that the corporate veils of all corporate entities in the chain of ownership between MedTest and the individual defendants be pierced. *See* Hearing Transcript Vol 2 at Pg 314-315. However, given that the Complaint only sought to pierce the corporate veil of MedTest, and the evidentiary hearing was set as to this Count in the Complaint by the undersigned after default judgment was awarded (including in relief requested in Highmark's own Motion for Evidentiary Hearing), the Court finds it inappropriate to pierce the veils of other corporate entities in the chain of ownership of MedTest in this civil action.

The Court considers evidence, in the form of an interrogatory answer, and argument presented that Defendant Brice Taylor is or was a member of Cenegen, LLC, which at some point, was in turn a member of MedTest. The Court also considers evidence, in the form of an interrogatory answer, and argument presented that Defendant James Taylor is or was a member of T4 Holdings, which, according to the interrogatory answer, is a member of Cenegen, which in turn is or was a member of MedTest.

These connections, even if could be proven or supported with stronger evidence than an interrogatory answer taken at the outset of this case, or fleshed out further in discovery in this case, are of no moment to the Court's conclusion, because the veil piercing cause of action in this civil action is as to MedTest only. Indeed, the West Virginia Supreme Court of Appeals has repeatedly held that "[t]he law presumes two separately incorporated businesses are separate entities and that that corporations are

separate from their shareholders.” Syl. pt. 3, *Southern Elec. Supply Co. v. Raleigh Cnty. Nat’l Bank*, 173 W. Va. 780, 320 S.E.2d 515, (1984); Syl. pt. 1, *Laya v. Erin Homes, Inc.*, 177 W. Va. 343, 352 S.E.2d 93 (1986); *Kubican*, 232 W. Va. at 280, 752 S.E.2d at 311; *Webb v. North Hills Grp., Inc.*, No. 16-0640, 2017 W. Va. LEXIS 492 *25-26 (W. Va. June 9, 2017) (mem. decision). Thus, the Defendants are separate and distinct from Cenegen and T4 Holdings and so cannot be held personally liable for a judgment against MedTest even if its veil is pierced.

Because Highmark cannot impose personal liability upon the Defendants even if it were to be granted the remedy of piercing the corporate veil of MedTest, it is not necessary for the Court to conduct the “fact driven analysis that must be applied on a case-by-case” which must be performed in order to assess whether, or not, to pierce MedTest’s corporate veil. Syl. Pt. 7, *Kubican*, 232 W. Va. 268, 752 S.E.2d 299. However, in the alternative, the Court does perform this analysis.

Kubican Factors for Veil-Piercing

10. A limited liability company is a specialized type of organizational entity, first established in this state in 1996 and presently appearing in Chapter 31B of the West Virginia Code. *Heartland, L.L.C. v. McIntosh Racing Stable, L.L.C.*, 219 W. Va. 140, 143, 632 S.E.2d 296, 299 (2006). West Virginia Code § 31B-2-201 specifies that “[a] limited liability company is a legal entity distinct from its members.” See also Larry E. Ribstein, *A Critique of the Uniform Limited Liability Company Act*, 25 Stetson L.Rev. 311 (Winter 1995). *Id.* Furthermore, Section 31B-3-303 of the West Virginia Code provides:

- (a) Except as otherwise provided in subsection (c) of this section, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, are solely the debts, obligations and liabilities of the company. A member or manager is not personally liable for a debt, obligation or liability of the company solely by reason of being or acting as a member or manager.

....

(b) All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations or liabilities of the company if:

- (1) A provision to that effect is contained in the articles of organization; and
- (2) A member so liable has consented in writing to the adoption of the provision or to be bound by the provision.

W. Va. Code Ann. § 31B-3-303 (West).

The language of this provision is unambiguous insofar as it declares that, with the exception noted in subsection (c), “[a] member or manager is not personally liable for a debt, obligation or liability of the company *solely by reason of being or acting as a member or manager.*” *Kubican v. The Tavern, LLC*, 232 W. Va. 268, 274, 752 S.E.2d 299, 305 (2013) (emphasis in original). The Court notes it has found above that Defendants in this matter were not members or managers of MedTest. Nevertheless, the Court continues to provide this analysis in the alternative. W. Va. Code § 31B-3-303 does permit the equitable remedy of piercing the veil to be asserted against a West Virginia Limited Liability Company. *Id.* at 275, 305.

To “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); *Dailey v. Ayers Land Dev., LLC*, 241 W. Va. 404, 825 S.E.2d 351, 353 (2019).

The application of this test “requires a fact-driven analysis that is specific to each case.” *Dailey v. Ayers Land Dev., LLC*, 825 S.E.2d 351, 360 (W. Va. 2019). In making this “case-by-case” determination, “some of the relevant factors” are the following:

- (1) commingling of funds and other assets of the corporation with those of the individual shareholders;
- (2) diversion of the corporation's funds or assets to noncorporate uses (to the personal uses of the corporation's shareholders);
- (3) failure to maintain the corporate formalities necessary for the issuance of or subscription to the corporation's stock, such as formal approval of the stock issue by the board of directors;
- (4) an individual shareholder representing to persons outside the corporation that he or she is personally liable for the debts or other obligations of the corporation;
- (5) failure to maintain corporate minutes or adequate corporate records;
- (6) identical equitable ownership in two entities;
- (7) identity of the directors and officers of two entities who are responsible for supervision and management (a partnership or sole proprietorship and a corporation owned and managed by the same parties);
- (8) failure to adequately capitalize a corporation for the reasonable risks of the corporate undertaking;
- (9) absence of separately held corporate assets;
- (10) use of a corporation as a mere shell or conduit to operate a single venture or some particular aspect of the business of an individual or another corporation;
- (11) sole ownership of all the stock by one individual or members of a single family;
- (12) use of the same office or business location by the corporation and its individual shareholder(s);
- (13) employment of the same employees or attorney by the corporation and its shareholder(s);
- (14) concealment or misrepresentation of the identity of the ownership, management or financial interests in the corporation, and concealment of personal business activities of the shareholders (sole shareholders do not reveal the association with a corporation, which makes loans to them without adequate security);
- (15) disregard of legal formalities and failure to maintain proper arm's length relationships among related entities;
- (16) use of a corporate entity as a conduit to procure labor, services or merchandise for another person or entity;
- (17) diversion of corporate assets from the corporation by or to a stockholder or other person or entity to the detriment of creditors, or the manipulation of assets and liabilities between entities to concentrate the assets in one and the liabilities in another;

- (18) contracting by the corporation with another person with the intent to avoid the risk of nonperformance by use of the corporate entity; or the use of a corporation as a subterfuge for illegal transactions;
- (19) the formation and use of the corporation to assume the existing liabilities of another person or entity.

Dailey v. Ayers Land Dev., LLC, 825 S.E.2d 351, 360 (W. Va. 2019); *see also Laya v. Erin Homes, Inc.*, 177 W.Va. 343, 347-48, 352 S.E.2d 93, 98-99 (1986); *Kubican v. The Tavern, LLC*, 232 W.Va. 268, 281, 752 S.E.2d 299, 312 (2013).

Here, the Court analyzes the *Kubican* factors, considering the evidence presented at the hearing. First, with regard to commingling of funds and other assets of the corporation with those of the individual shareholders, the Court was presented no evidence of any bank records, financial statements or the like which would support finding this factor in favor of piercing the corporate veil. The Court was presented no bank records indicating MedTest's funds were comingled with those of Defendants Billy Taylor, James Taylor, or Brice Taylor. For instance, although the testimony of Dr. Amjad averred that his interest in MedTest was bought out for \$500,000.00, there was conflicting testimony as to who he sold his share of MedTest to. In his deposition, he stated he sold it to Cenegen, and at the hearing, he testified he sold it to Billy Taylor. To solve this discrepancy, a paper record, the check, or the sales agreement would have been best evidence. However, at the hearing, there was no evidence in the form of the sales agreement or the check to Dr. Amjad for \$500,000.00, which would have definitively answered this question. The Court notes Dr. Amjad testified he did not have the sales agreement. Further, there were no bank records or other financial documents evidencing the ownership of the bank account this check was written from, let alone if it were owned by one of the Defendants to which veil-piercing was sought. The Court finds this factor does not weigh in support of veil-piercing in the case at bar.

Second, as to diversion of the corporation's funds or assets to noncorporate uses (to the personal uses of the corporation's shareholders, the Court finds that like the first factor, it was not presented with evidence of this type of financial activity at the hearing. There was no documentation or evidence provided that supported the diversion of MedTest's funds to personal use of the individuals, Billy Taylor, James, Taylor, or Brice Taylor. The Court notes the Plaintiff presented evidence, including the testimony of witnesses, evidencing fraud. Specifically, the Court mentions the testimony of Plaintiff's witness Chris Williams, wherein he arrived at MedTest's laboratory in Putnam County, West Virginia, only to find a virtually empty warehouse and not a functioning laboratory. Although the Court considers this testimony and the established fraudulent activity, no financial statements, check stubs, or bank account statements were submitted showing that any funds MedTest may have fraudulently procured from a sham laboratory or from its fraudulent billing were then diverted to personal use by any individuals, as is considered in a comingling of assets factor analysis for veil-piercing. For this reason, although money was obtained fraudulently by MedTest, the Court finds this factor does not weigh in support of veil-piercing in the case at bar.

Third, the Court considers failure to maintain the corporate formalities necessary for the issuance of or subscription to the corporation's stock. Like the previous two factors, the Court finds it was not presented documents or other evidence showing failure to maintain the corporate formalities of MedTest. The Court again differentiates this factor from the fraud established by Plaintiff's witnesses (although the Court notes it found default judgment in regard to the fraud causes of action in its order granting default judgment prior to the veil-piercing evidentiary hearing). Specifically, Plaintiff's witnesses Kurt Spear and Angela Taylor testified as to improper billing codes, which they alleged, were put in place by Billy Taylor. However, notwithstanding the improper billing coding to generate reimbursements fraudulently, the Court was not provided evidence that these monies from

reimbursements were then comingled between Defendants who failed to keep corporate formalities. In fact, the Court was not presented with evidence of bank statements from MedTest to show where this money went. For this reason, the Court finds this factor does not weigh in support of veil-piercing in the case at bar.

Fourth, the Court analyzes an individual shareholder representing to persons outside the corporation that he or she is personally liable for the debts or other obligations of the corporation. There was no evidence presented indicating that the Defendants made any such representations. As such, the Court finds this factor does not weigh in support of veil-piercing in the case at bar.

Fifth, the Court analyzes failure to maintain corporate minutes or adequate corporate records. Although the initial articles of incorporation of MedTest were presented at the hearing, the Court was not provided with any evidence showing failure to maintain minutes or corporate records during the life of MedTest. Although Plaintiff's counsel did argue that the ownership of MedTest was so obscure it was hard to track, there was no evidence provided regarding corporate records specifically. For instance, there was no evidence provided of MedTest's annual reports, or that the Secretary of State's Office did not receive the required annual reports. For this reason, the Court finds this factor does not weigh in support of veil-piercing in the case at bar.

Sixth, the Court examines any identical equitable ownership in two entities. Again, the Court considers that the evidence, the articles of incorporation, established that the members listed on the articles of incorporation are Muhammad Amjad, Ph.D. and Prabhaker Reddy, MD. *See* Def's Ex. 1-B. Further, the sole evidence offered by Highmark as to the identities of any alleged additional members of MedTest was MedTest's Answer to Interrogatory No. 4 of Highmark's First Set of Discovery Requests, admitted as Plaintiff's Exhibit 10, which alleged the following were members of MedTest at various times: Dr. Muhammad Amjad, Dr. Prabhaker Reddy, Cenegen, LLC, CeneTech, Inc., and

Dooley, Inc. The Court does not give great weight to an interrogatory answer, which the Court expects to have been fleshed out throughout the discovery process and supported by documentation evidence at the evidentiary hearing, especially when the issue is corporate ownership. The Court recognizes the interrogatory answer was verified, but opines best evidence would have been corporate ownership documents, many of which are required to be filed with the Secretary of State. Nevertheless, the Court considers these entities who were believed to have been members of MedTest at various times via interrogatory answer.

No evidence was proffered by Highmark as to the state of organization or incorporation of Defendants Cenegen, LLC or Vitas Laboratories, LLC, or non-party T4 Holdings, LLC. The Taylors, in their supplemental response to Highmark's supplementation of the record, proffered organizational documents for T4 Holdings, LLC, which demonstrate that T4 Holdings, LLC is an Oklahoma Limited Liability Company. *See* The Taylors' Responsive Supplementation of the Record, filed July 14, 2022.

During the hearing, Highmark proffered evidence as to the ownership of Cenegen (in Plaintiff's Exhibit 10); specifically, that Cenegen's members include Brice Taylor and T4 Holdings, LLC (and that James Taylor is a member of T4 Holdings). *See* Plaintiff's Exhibit 10. Again, the Court notes Plaintiff's Exhibit 10 is MedTest's interrogatory answers, and there was no evidence presented to the Court at the hearing that was obtained through discovery to support this interrogatory answer. Highmark did not proffer any evidence as to the ownership of Vitas Laboratories.

For this reason, the Court finds that as far as identical equitable ownership in two entities is considered, the evidence does not weigh in favor of veil-piercing. Although it was alleged that James Taylor was a member of T4 Holdings, which was alleged to be a member of Cenegen, and that Brice Taylor was a member of Cenegen, this does not constitute identical ownership in MedTest, which is the only LLC the veil-piercing cause of action and analysis pertains. There was no evidence of Muhammad

Amjad, Ph.D. and Prabhaker Reddy, MD, the established members of MedTest, having identical ownership in other entities.

Seventh, the Court considers the identity of the directors and officers of two entities who are responsible for supervision and management (a partnership or sole proprietorship and a corporation owned and managed by the same parties). The Court was not presented evidence applicable to this factor at the hearing. The Court considers it heard testimony from Dr. Amjad, who testified that he was not familiar with billing codes, and that Billy Taylor instructed him on which billing code to use, and that Billy Taylor told Dr. Amjad he could bill for laboratory services from other states, and that not doing so was "doing it wrong." However, in considering factor seven, the Court finds this is supervision or management of Billy Taylor with regard to billing on behalf of MedTest. The Court did not hear evidence that there were other entities, such as a partnership or sole proprietorship, upon which Billy Taylor also supervised or directed activities in. The Court finds factor seven is not applicable to the case at bar. For this reason, the Court finds this factor does not weigh in favor of veil-piercing.

Eighth and ninth, the Court considers the failure to adequately capitalize a corporation for the reasonable risks of the corporate undertaking and the absence of separately held corporate assets. Again, here, the Court was not presented with bank statements or other documentation showing the where funds of MedTest went. Therefore, the Court cannot say it was presented evidence with under capitalization of MedTest or any absence of separately held corporate assets. For this reason, the Court finds factors eight and nine do not weigh in support of veil-piercing in the case at bar.

Tenth, the Court considers the use of a corporation as a mere shell or conduit to operate a single venture or some particular aspect of the business of an individual or another corporation. Here, Plaintiff presented evidence and witness testimony regarding fraudulent activity of MedTest. Further, Judgment was found against MedTest with regard to its fraud, as mentioned by the undersigned earlier in this Order.

Therefore, fraud was conclusively established. Further, the testimony of Chris Williams described a supposed laboratory site of MedTest which did not have the normal equipment, sterilized rooms, and activities one would expect to see in a laboratory, and was more akin to an empty warehouse. For these reasons, the Court finds this factor does weigh in favor of veil-piercing.

The Court now addresses which Defendant(s) this factor supports veil-piercing against. First, there was testimony from witnesses that Billy Taylor, on behalf of MedTest, engaged in fraudulently billing Highmark West Virginia for services performed in other states, which was fraudulent activity. Specifically, the Court considers the testimony of Kara McVey, who reviewed bills in this matter. Ms. McVey testified that out of all the bills she reviewed, none were for services performed in West Virginia. The Court also considers the testimony of Dr. Amjad, who testified that he was not familiar with billing codes, and that Billy Taylor instructed him on which billing code to use, and that Billy Taylor told Dr. Amjad he could bill for laboratory services from other states, and that not doing so was "doing it wrong." The Court concludes this evidence supports the position that Billy Taylor as an individual used MedTest as a conduit for the established aforementioned fraudulent billing activities. To the contrast, there was no evidence that Brice Taylor or James Taylor personally billed in this same vein, using MedTest as a mere shell or conduit for fraudulent activities. During the hearing, Highmark did not introduce any evidence of Brice or James Taylor being personally involved (1) in the preparation or submission of allegedly fraudulent bills to Highmark or (2) alteration of medical records. Likewise, during the hearing Highmark did not introduce any evidence of any false statements made by the Brice or James Taylor, personally, either during the course of events at issue in this litigation or during the litigation itself. For this reason, the Court finds this factor weighs in favor of veil-piercing against Billy Taylor only.

Eleventh, the Court considers if there exists sole ownership of all the stock by one individual or members of a single family. There was no evidence presented at the hearing as to the ownership of

MedTest indicating sole ownership of all the stock by one individual or family. For this reason, the Court finds this factor does not weigh in favor of veil-piercing.

Twelfth, the Court analyzes the use of the same office or business location by the corporation and its individual shareholder(s). Here, there was no evidence presented of the same office location or address being used for MedTest and the individual Defendants personally. In fact, while MedTest had a West Virginia address, Billy, Brice, and James Taylor worked and lived out of state. For this reason, the Court finds this factor does not weigh in favor of veil-piercing.

Thirteenth, the Court considers the employment of the same employees or attorney by the corporation and its shareholder(s). Likewise, there was no evidence presented at the hearing regarding the sharing of employees between MedTest and the individual Defendants personally. No evidence was presented indicating the individuals were comingled with MedTest in this way. For this reason, the Court finds this factor does not weigh in favor of veil-piercing.

Fourteenth, the Court considers any concealment or misrepresentation of the identity of the ownership, management or financial interests in the corporation, and concealment of personal business activities of the shareholders (sole shareholders do not reveal the association with a corporation, which makes loans to them without adequate security). Here, the Court considers averments throughout this case from Plaintiff's counsel that the identity of the ownership of MedTest was deliberately hard to trace. There existed confusion as to the owners of MedTest after 2016, as indicated by Dr. Amjad's testimony. However, the Court also considers that it was not proffered with documentation from official sources, such as required annual reports from the Secretary of State.

Further, as to the second prong of factor fourteen, the Court was not presented evidence with the concealment of personal business activities of Defendants, wherein they did not reveal the association with the corporation. On the contrast, in this case, the fraudulent billing occurred when MedTest and

Billy Taylor billed Highmark West Virginia for services provided in other states. This billing occurred on behalf of MedTest, not any Defendant personally, concealing or otherwise not revealing his association with MedTest. For this reason, the Court finds this factor does not weigh in favor of veil-piercing.

Fifteenth, the Court considers any disregard of legal formalities and failure to maintain proper arm's length relationships among related entities. Here, no evidence was brought by Plaintiff to show whether or not formalities were disregarded, such as a failure to file annual reports, or failure to have required corporate meetings. Instead, the evidence focused more on the fraudulent activity of MedTest. For this reason, the Court cannot find that this factor weighs in favor of veil-piercing.

Sixteenth, the Court considers the use of a corporate entity as a conduit to procure labor, services or merchandise for another person or entity. Here, it has been established that MedTest was used as a conduit to bill for services not provided in West Virginia laboratories. There was no evidence, in the form of bank records of MedTest or individual Defendants, indicating MedTest was then used as a conduit to procure services for an individual Defendant. No evidence was presented indicating the individual Defendants were comingled with MedTest in this way. For this reason, the Court cannot find that this factor weighs in favor of veil-piercing.

Seventeenth, the Court considers any diversion of corporate assets from the corporation by or to a stockholder or other person or entity to the detriment of creditors, or the manipulation of assets and liabilities between entities to concentrate the assets in one and the liabilities in another. For the same reasons enumerated above for factor sixteen, the Court cannot find that this factor weighs in favor of veil-piercing.

Eighteenth, the Court considers contracting by the corporation with another person with the intent to avoid the risk of nonperformance by use of the corporate entity, or the use of a corporation as a

subterfuge for illegal transactions. The Court considers that it has been established that MedTest was used to perpetuate fraudulent billing, by billing Highmark West Virginia for services provided in laboratories outside of West Virginia. Considering the use of MedTest for fraudulent transactions, the Court finds this factor weighs in favor of veil-piercing, and now the Court must analyze as to who. As the Court stated earlier in this Order in examining factor ten, witness testimony established that Defendant Billy Taylor engaged in fraudulently billing Highmark West Virginia for services performed in other states, which was fraudulent activity. However, there was no evidence that Defendants Brice Taylor or James Taylor personally utilized MedTest as a conduit to bill in this way, in this same vein. During the hearing, Highmark did not introduce any evidence of Brice or James Taylor being personally involved (1) in the preparation or submission of fraudulent bills to Highmark or (2) alteration of medical records. Likewise, during the hearing Highmark did not introduce any evidence of any false statements made by the Brice or James Taylor, personally, either during the course of events at issue in this litigation. For this reason, the Court finds this factor weighs in favor of veil-piercing against Billy Taylor only.

Nineteenth, the Court considers the formation and use of the corporation to assume the existing liabilities of another person or entity. Here, no evidence was brought by Plaintiff that showed the use of MedTest to assume the existing liabilities of another person or entity. The Court finds this factor is not applicable. For this reason, the Court cannot find that this factor weighs in favor of veil-piercing.

Finally, the Court considered the whole of the evidence presented and the possibility of other factors that could lend themselves to this analysis. The Court does not find that other factors exist or are helpful to the determination as to veil-piercing. In sum, the Court finds the nineteen factors enumerated by *Kubican* do not support piercing the corporate veil of Defendant MedTest in the case at bar. None of the nineteen factors support piercing the veil as to Defendants Brice or James Taylor and only two of the nineteen factors support veil piercing as to Defendant Billy Taylor. The analysis of the nineteen

Kubican factors does not support a finding that there was such unity of interest and ownership that the separate personalities of MedTest and the individual Defendants no longer exist. For this reason, the Court concludes the corporate veil of MedTest shall not be pierced. Plaintiff Highmark is not entitled to any award or relief from Defendants Billy Taylor, Brice Taylor and James Taylor, and judgment on the veil-piercing cause of action is entered in their favor.

Other Damages

11. Finally, the Court addresses and analyzes the appropriateness of punitive damages and attorney's fees in this civil action. "A finding of compensatory damages is a necessary predicate for an award of punitive damages." *See Toller v. Cassinelli*, 129 W. Va. 591, 601, 41 S.E.2d 672, 679 (1946). Highmark has not sought, or obtained, compensatory damages from Defendants Billy Taylor, Brice Taylor, or James Taylor. As such, Highmark is not entitled to an award of punitive damages against them personally.

Moreover, West Virginia law prohibits an award for punitive damages in breach of contract actions. *See Singleton v. Citizens Bank of Weston, Inc.*, 2012 W.Va. LEXIS 66 *21 (Feb. 13, 2012). In this case, Highmark obtained summary judgment against the MedTest for breach of contract, and was awarded \$6,481,765.94. *See Order Granting Summary Judgment*, entered May 26, 2022. Highmark, therefore, cannot obtain punitive damages from MedTest because the cause of action that Highmark prevailed on, and for which it was awarded compensatory damages, was breach of contract.

With regard to attorney's fees, the Court finds as follows. "As a general rule each litigant bears his or her own attorney's fees absent a contrary rule of court or express statutory or contractual authority for reimbursement." *See Syl. Pt. 2, Sally-Mike Properties v. Yokum*, 179 W. Va. 48, 365 S.E.2d 246 (1986). One exception to this rule is in cases involving fraud. *See Boyd v. Goffoli*, 216 W. Va. 552, 569, 608 S.E.2d 169, 186; *see also Syl. Pt. 4, Bowling v. Ansted Chrysler-Plymouth Dodge*, 188 W. Va. 468,

425 S.E.2d 144 (1992). In such instances, "[t]here is authority in equity to award to the prevailing litigant his or her reasonable attorney's fees as 'costs,' without express statutory authorization, when the losing party has acted in bad faith, vexatiously, wantonly or for oppressive reasons." Syl. Pt. 3, *Sally-Mike Properties v. Yokum*, 179 W. Va. 48, 365 S.E.2d 246.

In this case, Highmark has not prevailed on its veil-piercing cause of action against the individual Defendants Brice Taylor, James Taylor and Billy Taylor. The Court notes the individual Defendants were only named in the veil-piercing cause of action. Because Highmark did not prevail, the Court declines to award attorney's fees.

Finally, because, as detailed above, Highmark is not entitled to judgment against the Brice Taylor, Billy Taylor, or James Taylor, Highmark is not entitled to any award of pre or post judgment interest against them.

CONCLUSION

It is hereby **ADJUDGED** and **ORDERED** that Count VIII of the Amended Complaint is hereby dismissed and disposed of. It is further hereby **ADJUDGED** and **ORDERED** that the request to pierce the corporate veil of Defendant MedTest, LLC is hereby **DENIED**. The Court notes the objections of the parties to any adverse ruling herein. This is a **FINAL ORDER**. There being nothing further to accomplish in this matter, the Clerk is directed to retire this matter from the active docket.

The Clerk shall enter the foregoing and forward attested copies hereof to all counsel, to any *pro se* parties of record, and to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

IT IS SO ORDERED.

09-22-2023



JUDGE SHAWN D. NINES
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.

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

Arie M. Spitz, Esq.
Dinsmore & Shohl LLP
707 Virginia Street E., Suite 1300
Charleston, West Virginia 25301
Counsel for Defendants James Taylor, Jr. and Brice Taylor

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

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