2025 WL 4034984 (N.J.Super.L.) (Trial Order)
Superior Court of New Jersey, Law Division,
Civil Part.
Essex County

HEALING AT HIDDEN RIVER, Plaintiff,
v.
AETNA LIFE INSURANCE COMPANY, et al., Defendants.

No. ESX-L-2381-25.
October 8, 2025.

***1** Place: Essex County Historic Crt.
470 Dr M.L.K. Jr. Blvd.
Newark, NJ 07102
SHANNON GREEN, (Thomson Reuters)
Audio Recorded Recording Opr: Tanisha Thomas

Transcript of Motion

David M. Estes, Esq., Eric D. Katz, Esq., Mazie Slater Katz & Freeman, L.L.C., for plaintiff.

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Mariellen Dugan, Esq., Calcagni & Kanefsky, LLP, for defendant.

Honorable Stephen Petrillo, J.S.C.

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Colloquy

(Proceeding commenced at 2:57:29 p.m.)

THE COURT: We're on the record. This is **Healing at Hidden River**, LLC versus Aetna Life Insurance Company and various other parties, including the moving party here today, the Vanguard Group, Inc. This is a motion to dismiss, with opposition and a reply. Can I have the appearance of counsel, starting with Plaintiff's Counsel?

MR. ESTES: Good afternoon, Your Honor. This is David Estes and Eric Katz from the law firm Mazie Slater Katz and Freeman, on behalf of the Plaintiff.

THE COURT: Welcome.

MR. ESTES: Thank you.

MR. SILVER: Good afternoon, Your Honor. Sam Silver and Abigail Burton from Welsh and Recker, on behalf of the Vanguard Group.

THE COURT: Welcome, Counsel, good to see you.

MR. SILVER: Thank you.

THE COURT: Counsel, do you want to put your appearance on the record?

MS. DUGAN: Sure, good afternoon, Your Honor. Mariellen Dugan of Calcagni and Kanefsky and I represent (indiscernible) — in this matter (indiscernible) —

THE COURT: And you have your motion coming up.

MS. DUGAN: We do.

THE COURT: Yes.

MS. DUGAN: On the 2 3rd, Your Honor.

THE COURT: Right after I get back.

MS. DUGAN: I also wanted to check on the timing of that because I'm not sure —

THE COURT: Before you leave, I'll get you the answer, okay?

MS. DUGAN: Yes, okay, thank you.

THE COURT: Absolutely. So I guess, other than Mr. Silver, everyone can take a seat. Mr. Silver, I've read what was submitted, you were very thorough, as was the opposition, the follow-up. I have it all here. I'm going to let you take it away.

MR. SILVER: Thanks, Your Honor and I was going to begin with by saying that I'm sure Your Honor is familiar with the case and —

THE COURT: As best as I can be, thank you.

MR. SILVER: — you clearly are. I will say that our motion, I'm not going to say it's an easy motion, no motion is probably easy but it's a simple motion and it's a little bit different than the motion filed by the defendants, Vanguard, as Your Honor knows, is sued as a payor defendant in this case.

And our motion, our views, I think entirely and solely that Vanguard should be dismissed because there are no facts pled in the complaint that would be appropriate and sufficient to give rise to Vanguard being in the case and give rise to the causes of action as you — and I realize that, in some respects, our task is difficult because another judge of the same court has moved on similar cases and allowed the cases to go forward.

I would suggest to Your Honor and I can't address those cases in full because Vanguard is not a defendant in any one of those cases and I have never read the complaint in any of those cases, so I can't tell you whether they are factually different. There are some remarks in Judge Lynott's opinions, a couple of them suggested that there were more thorough facts or more complete facts pled, some of those but I can't tell you that for sure because I don't have those complaints.

***2** I will say with respect to Vanguard, there's essentially no fact pled. There are literally, I think it's fair to say, two true facts pled and I don't think they get anywhere near what either Rule 452 says for most types of (indiscernible) — and certainly not what Rule 458 requires with respect to particularity for the five conspiracy claims that are pled here.

The only true facts that are pled against Vanguard in this case are, number one, that Vanguard employees, it provides the healthcare benefits to the parent or guardian of one of the patients concerning (indiscernible) — reimbursements, that's number one. And number two, that Vanguard uses Aetna as a third-party administrator or TPA to manage its healthcare plan.

And there's truly — I know the plaintiffs argue in their reply brief that they apply a lot of facts against Vanguard and I would suggest, Your Honor, that there were five briefs sent to (indiscernible) —I guess in response to (indiscernible) — the response brief says a lot of things that actually aren't in the complaint —
THE COURT: The opposition, you're talking about, right?

MR. SILVER: Exactly, the opposition brief and respectfully, I think it's not an accurate characterization the complaint. We're here obviously to argue about what the complaint sets forth facts. Plaintiffs, if they believe that they can assert what's in their opposition brief could have asked for leave — well, could have automatically been (indiscernible) — complaint before filing a response.

Or, if Your Honor dismisses their case, it's going to be without prejudice with regard to their pleading and they can always re-plead with specificity, if they can do that and that's the real issue. Can they really assert what they're claiming as facts against Vanguard? Are there truly factual allegations?

And what I would say, Your Honor, is that —you know, everybody cites to the Printing Mart standard, that is obviously the leading case on the (indiscernible) — standard in the state. And I think we're all well aware and wouldn't argue for a second, it is a liberal pleading standard.

Nonetheless, it is still a fact pleading standard and Printing Mart — Printing Mart makes clear, it regards something more than year recitations of the elements of the cause of action and an assertion (indiscernible) — the Defendant (indiscernible) —

There has to be actual facts alleged under the rules and under Printing Mart. Printing Mart says, the examination of a complaint's allegations of fact require by the afore stated principles, should be one that is at one's painstaking and undertaking with a generous and hospitable approach. And then the essential facts supporting Plaintiff's cause of action must be presented in order for the claim to survive. Conclusory allegations are insufficient in that regard.

And I would suggest to you, Your Honor, and I certainly won't (indiscernible) — long complaint, there is a lot said in the complaint but with respect to Vanguard at least. Everything that's stated that was characterized as a fact was really merely a conclusion of law or a conclusion that says; this is what the test is to assert this claim that they were negligent, they conspired, they committed fraud. There are no actual facts pled other than the two that I've stated and that's really the basis for our motion.

I do think we argue that Plaintiff's complaint against Vanguard essentially rises and falls with her allegation that Vanguard — that Aetna, who is clearly their main party defendant in this case, Aetna and related defendants, that Aetna was Vanguard's agent for purposes of what they're alleging in this case. And I know Plaintiff says that they also assert a direct claim against Vanguard but I think that (indiscernible) — is that Vanguard failed to supervise with due diligence about Aetna. There are no real facts alleged in that regard either.

***3** With respect to agency. The only fact that plaintiffs have and can state with respect to agency is that Vanguard used Aetna as a third-party administrator. But the rest of what plaintiffs allege in this case is that Aetna or Aetna's affiliates, went outside

of their arrangement with Vanguard and the other care defendants in telephone calls with Hidden River, with the Plaintiff, and entered into some sort of arrangement that was beyond what their defendants had authorized Aetna to do.

And plaintiffs even alleged throughout their complaint that the payor defendants were deceived and those are, you know if anything, I think they suffer from the same infirmity, that those are really fact allegations but they're not alternative theories. They are asserting that by its actions, by doing what it did, Aetna literally deceived Vanguard and others and that's inconsistent with the theory of either actual or apparent authority or agency.

There's no allegation in the complaint either that Vanguard authorized Aetna to do what it did or to enter into those kind of conversations as these and there's also no allegation that Hidden River had any sort of contact with Vanguard that created a parent authority. So there is nothing to support a claim of parent authority.

And I've outlined, Your Honor, in my notes probably ten or more paragraphs in the complaint where I think Plaintiff's claims are fundamentally inconsistent with their agency theory and you just simply can't factually have it both ways and it points out the problem here. It points out that, while plaintiffs say they're alleging facts against Vanguard, they're really not. They're really alleging against Aetna and throwing in Vanguard as an afterthought and the other payor defendants.

And I'll read you some of them. They claim that, in page 26, paragraph 76, Aetna certifications and payor, that's Vanguard. The NAP, that's the Aetna program, will not cause any additional exposure to medical costs or debt for patients but that — but that is false, according to plaintiffs. They say, upon information and belief, this is paragraph 80, Aetna did not adequately or fully expose the (indiscernible) —and implications of (indiscernible) — defendants.

They say in Paragraph 83, by routing these claims through a facially independent company, Aetna can mislead the payor defendants and charge them the extra fees. More self-healing conflicts apply and as I'm sure Your Honor is aware, Plaintiff claims throughout the complaint that Aetna and the payor defendants are in conflict with one another because of Aetna's alleged deception.

And I think I don't need to go on, Your Honor, you've seen the complaint but it is rife with allegations that Aetna deceived the payor defendants. I don't stand here and tell you whether that's true or not, that's not my business here and I'm not here to disparage Aetna or for that matter to say the plaintiffs are wrong but that plaintiff allegation shows what the problem is with the allegations and the lack of fact allegation with respect to Vanguard.

There is literally not a single fact opined by anybody to any of this. If the case is allowed to go forward, particularly on all claims against Vanguard, it essentially says that, simply by using Aetna as a third-party administrator that, that fact alone can give rise to all of the claims in this case.

And I'm going to sit down in a minute and I'll be happy to take questions or respond to Plaintiff's arguments but I think in particular, I would like the Court to dismiss all the Plaintiff's claims against Vanguard and I think it would be appropriate to do so because with respect to all of them there's the same infirmity but with respect to fraud and conspiracy, I think it's particularly clear.

***4** I know that the rule says that for state-of-mind, the actual mental state, you can plead generally but fraud and conspiracy do need to be pled with particularity and there is certainly no particularity. There is no fact allegation whatsoever. There are conclusions. There are things that say, Vanguard and the other payors and in the complaint, it never say Vanguard.

It said, it payor defendants, they're all lumped together. It says, the payor defendants conspired with the plaintiffs, the payor defendants committed fraud but there are no actual facts alleged with respect to anything that Vanguard did that would give rise to those claims. So those claims certainly should be dismissed and that's all I've got to say at this time, Your Honor. I'm happy to answer questions and respond to Plaintiff. Again, it's a very straightforward motion.

THE COURT: It is and I normally have a lot more questions than I do but having prepared this sort of detailed outline and overview that I did, I dug in and I was waiting for you to come in and say what you said and you didn't deviate from what you said in the papers. You clarified a few things and I thank you for it. So you'll have the last word on reply.

MR. SILVER: Thank you, Your Honor.

THE COURT: Thank you.

MR. ESTES: Good afternoon, Your Honor and thank you. I'll respond to Counsel for Vanguard's points somewhat in order. I agree that this is a simple motion, Your Honor. I think that the reason this motion should be denied is because I think the presentation that Vanguard submits to the Court ignores three important things.

I don't think it actually tackles the facts alleged in the complaint. There's a couple addressed but the complaint is over 50 pages long, it involves over 200 allegations and when the complaint is read as a whole, it satisfies the second thing that's ignored, which is the Printing Mart standard. It was referenced but it's not just a liberal standard. The standard requires, as Your Honor knows, for a claim to be gleaned even from a secure statement.

And I think the third thing that this motion overlooks is how those two things come together and the prior decisions by the complex business litigation courts across the state. Those courts have looked at these type of allegations and these type of cases and have found that they're sufficient to clear the standards set by a 4:6-2(e) motion. And I think when you look at those three things together, I think there's more than enough facts alleged in this complaint against the Defendant, Vanguard, to move forward into discovery and to require them to file an answer, as pled.

As far as the contention that there's no facts and there's only two paragraphs of facts pled against Vanguard, I don't think that's accurate, Your Honor. As Counsel mentioned later in his argument, the complaint uses a defined term of payor defendants, rather than listing each defendant lengthy in the complaint. That doesn't mean that those allegations are not against Vanguard. They are against Vanguard. It's simply a typical practice that's used by all attorneys, in all kinds of filings, for efficiency. That doesn't change the facts as alleged in the complaint, Your Honor.

There was — there's a reference or a query that was presented by Counsel as to what the other complaints were that were evaluated in the other CVLP decision for Atlantic. For example, Atlantic Shore decision that Judge Lynott — there were 600 decisions that were referenced in the briefing. Those complaints were prepared by my office.

***5** I think all of them or most of them were drafted either by myself or Mr. Katz and I can represent to the Court, I mean, they're available in the docket. I can represent to the Court that they have, essentially, identical amount of detail and allegations with respect to the relationship between a payor defendant and an administrator or a healthcare insuring defendant.

Moving on. I would just point out to Your Honor that with respect to the issue of agency, which Counsel discussed, I understood his argument to be that there was not a sufficient factual allegation, there were only conclusory allegations. I would just direct the Court to Plaintiff's opposition brief at pages 20 to 26 and note that they are — in those pages, there are about 32 different citations and quotations from the paragraphs of allegations relevant both to whether or not we adequately alleged actual agency and then as well as to the apparent agency broken down by the elements that are required.

And I would just also note, I mean, in New Jersey, whether agency exists, whether agency really should exist, as Your Honor knows, is almost always a question of fact and unless there's a clear record, it's something that gets submitted to the jury. We gave Your Honor some precedent on that.

And I think another thing to be mindful of in this circumstance. The (indiscernible) — saying that we need to allege that, you know, what kind of private conversations might have occurred between Vanguard's representative and Aetna's representative at some corporate office somewhere else. Obviously, my client is not going to know that and I would like to talk about my client.

I know Your Honor has had similar cases to this, whether it's a reimbursement dispute between a healthcare provider and a health insurer or payor, administrator. This Plaintiff is a little bit different, I just wanted to underscore that for Your Honor. This is not a doctor doing annual physicals or an orthopedist setting a broken arm. Healing Hidden River is a very unique provider in North Jersey and one of the few in the entire state.

It's a residential facility, they only have 22 beds. It's around-the-clock care. Their patient population is young ladies and teenagers who suffer from the most severe eating disorders, catastrophic eating disorders, they cannot live at home, their lives are in danger. These are the only 22 beds in North Jersey that can help these people. They have a waiting list, they take their job very seriously and it's not just a hotel, it's a complete residential facility.

So they have medical providers that do the counseling for the accompanying psychiatric disorders. They have, you know, cafeteria food, nutritional needs for people with fragile health. They provide school because some — like, for example, the child that is related to Vanguard, she was in there for 49 days, she was at the facility. So they have school, they provide individual counseling for the young ladies, they also provide family counseling so they can come around.

This is not just your regular orthopedist. This is a very special provider. They're the only place to go in North Jersey and they are more than half the beds that are available in the entire state. And why that's important is because unlike a typical case where maybe it's like a bait a switch. Like you called in, you told me you were going to pay me a buck, you paid me a dime, I want more.

***6** This case has that it has the repricing like other cases I've had before but it has more because it involves mental health. There are other laws that apply, particularly, the mental health parody laws, which are laws both in New Jersey and in the Federal System which require a company like Vanguard and Aetna to provide equal access to healthcare as you would for someone who doesn't have a mental health disorder.

So for example, hurdles cannot be erected to let patients have access to this care and that also includes, they can't bear additional cost because cost is an additional hurdle and that's why these claims are really important because if Healing River can't move forward with these claims and Chief Justice, where does this cost go? It goes on these children's families. So I think these claims are very important, I think the complaint is very well pled, Your Honor.

As far as — there's obviously some argument made about the fact that there's allegations in the alternative. So, it's true, there are allegations in the alternative. One set of allegations, one section of the facts alleges that Aetna engaged in a repricing practice, somewhere in the multiply cases but in this case, it wasn't even a third-party company, it was a company that Aetna controlled.

So there's allegations, I won't belabor them, you're familiar with what repricing is. And those allegations, we allege — because based on information we know from representing a variety of providers in a variety of contexts, as well as insurance, that it's possible that the payors didn't know and that they were being taken advantage of.

But we also alleged, in that alternative, that they knew about it, that they endorsed it or that they chose not to know about it. They didn't check, they didn't disclose what was going on and we're entitled to plead in the alternative. There's a reference to Rule 462, 458.

The Court Rules also say that we have a right to plead cause as an alternative, even contradictory causes. That's what we're supposed to do as a pleading party. So there's nothing afoul with the fact that there are some theories that are in the alternative and as we go through discovery, we'll get to the bottom, we'll find out if Vanguard knew what they were doing and they were involved in it or they didn't know.

And also, I think this issue, I'm going to underscore for Your Honor, I think this issue — if it turns out that the payors like Vanguard did not know what Aetna was doing but it also implicates an issue of a conflict of interest between the payor's interest in this litigation and Aetna's. And if it gets to that point, it also begs the question, how can Aetna's attorneys be representing payors at the same time? We'll get there when we get there but I just wanted to plant that seed, Your Honor.

And I think as far as the issue of pleading with particularity. There was an argument that both the fraud and the conspiracy claim needed to be pleaded with particularity. Off the top of my head, I'm not familiar with any case that requires particularity as to conspiracy. Certainly, a fraud or a misrepresentation claim must be pled with particularity, who, what, why, where? But the rule also says, insofar as possible and we've pled all the allegations that we have to support our claims.

And the final thing I just wanted to focus Your Honor's attention on, Exhibit 9 to our certification, it has some of the checks that Aetna sent on behalf of Vanguard to my client and I just wanted to point out to Your Honor what those checks say. And obviously, we know that this motion is limited to the complaints in the pleading but it's a proffer to where discovery is going to go. And what those checks say, it says, “Aetna Life Insurance Company or an affiliated company as agent.” So again, “As agent for specified payors,” so — or payor, parentheses, payors.

***7** So the actual partial payments that were sent to my client with respect to the patient relating to Vanguard, they say on the checks, it's Exhibit 9, that Aetna is mailing them as an agent of Vanguard. So I — I just — the idea that there's not an agent, a colorable argument of an agency relationship, I think it's belied by the actual facts. Unless you have any other questions.
THE COURT: I don't, Mr. Estes, thank you very much, appreciate it.

MR. ESTES: Thank you, Your Honor, always a pleasure.

THE COURT: My pleasure. Mr. Silver?

MR. SILVER: Thanks, Your Honor, I'm going to try to address most of the points that Counsel made. The last one of which, just because I have that one (indiscernible) — in this paper so I'll address it first. I appreciate that Counsel appropriately pointed out that whatever is on the pieces of paper that Counsel has cited to and said that's a proffer from discovery, which means it's not a part of the complaint.

It was not attached to the complaint, it was not cited in the complaint and it should not be considered with respect to the motion to dismiss. I assume that if Plaintiff re-pled, they would attach it and sign it and so on and so forth. The fact that a document says Aetna is paying this on behalf of Vanguard as an agent, Vanguard, it's not disputed that Aetna is a third-party administrator for Vanguard.

That does not mean that Aetna was Vanguard's agent with respect to negotiating — not negotiating but what Plaintiff claims, which is that, Hidden River called Aetna and had a discussion whereby Aetna allegedly went beyond its agreement with Vanguard and made a representation that they would pay something beyond the agreement, beyond the amount that they should have paid vis-a-vis Vanguard's plan.

So I think they have a few problems with that. Probably for the other Defendant's motion that deals with the (indiscernible) — other issues, they're going to have a problem because they're going beyond the plan. They haven't (indiscernible) — plan or not but with respect to this motion, to Vanguard's motion, the fact is, there is no fact stated in the complaint or even in the document that Counsel just pointed Your Honor to that says that Aetna had — was either the actual agent or the apparent agent and that vis-a-vis Hidden River, there was actual or apparent authority for Aetna to do what was alleged in this complaint vis-a-vis (indiscernible) — that's for (indiscernible) —

While I'm on the agency issue, I do want to point out, Counsel notes that the ultimate issue of agency is frequently a jury issue, a fact issue. The cases that Counsel cites and the cases that are out there on that issue have to do with what happens not at the beginning of the case when (indiscernible) — other facts but when we get to the end where we have facts pled and the question is, is it a judge issue, is it a bench matter to decide, as a matter of law, whether there's agency or not on given facts pled or is it a jury issue and the case law says, it is most often, not always but must often a jury issue. A whole different inquiry from what we're dealing with here. Here, our allegation, our assertion is, there are not facts pled. So we never get that ultimate determination, we should not get there.

Counsel began by saying; there are facts, but there are facts, but there are facts pled but they have not pointed out a single one. And you know, yes, it's a long claim, yes, it says lots. It has a whole narrative. I'm trying very hard to use pejoratives. I was about to say story, I don't mean to say story, a narrative, perfectly appropriate narrative, about Aetna and its affiliates and a — a program that they had.

***8** And thrown into that narrative are conclusions that the payor defendants were partners. No actual facts. The only actual fact is that the payor defendants contracted with Aetna to be a third- party administrator. Nothing about the payor defendants have knowledge, nothing about communications between the payor defendants and Aetna and goodness knows, the plaintiffs, as they represent to this Court, have had many, many cases on this exact issue where motions to dismiss were denied.

They know — this issue of where practical. These plaintiffs have lots of opportunity and have had lots of opportunities to understand what they're pleading here and they know full well that they have no allegations against Vanguard.

And by the way, just I think Your Honor knows this but on the issue of conflict. Again, meaning no — intending nothing with respect to other defendants who are represented by Aetna's Counsel and also are payor defendants. This payor defendant was not represented by Aetna's Counsel. This payor defendant is represented by me and me alone. So I don't think Plaintiff means to suggest that there's any conflict with respect to that representation.

Printing Mart, again, referenced Printing Mart. Your Honor, I'm sure is very familiar with it. The actual Printing Mart case is rife with facts. The question ultimately was, do the facts make up the cause of action? But the Court's opinion points to communications (indiscernible) — had to do with a bid and alleged or did rigging or fixing of bids with (indiscernible) — bids made, all kinds of detail about fact pattern was in the complaint in that case.

So whole different issue but again, the Court enunciated that it's a very difficult matter because the Court needs to look at the facts pled and determine whether they make out the cause of action. Here, it's sort of an easier — it's hard to (indiscernible) — read a very long complaint but you won't find the facts pled and that's the issue in this case.

Counsel pointed out, in particular, Judge Lynott's Atlantic Shore case and I will note that, that happens to be one of them that I think does distinguish itself from this case. In that case, Judge Lynott expressly referred to how the (indiscernible) — as well as Aetna negligently represented or it was alleged that they negligently represented in a variety of communications that they would pay for emergency services in a matter that would protect the patient from (indiscernible) — insurances.

That allegation is not in this complaint and in this complaint, the allegation is just the opposite, that Aetna deceived Vanguard, that Aetna misled Vanguard, that Aetna did not advise Vanguard that there might be balance billing (indiscernible) — so and there's no allegation in this complaint and there was a variety of communications with Vanguard.

The closest you come and it's simply, Plaintiff notes the truth of this allegation. The closest you come is when Plaintiff recites the phone calls that were made to get free authorization. Plaintiff says, Aetna or payor defendant. Plaintiff knows every single one of those was to Aetna. There's no allegation that there was action to Vanguard, that any such claim was to Vanguard.

If there is, plaintiffs are able to amend and make that allegation. They have access to who made the calls, when the calls were made and to whom they were made and they can certainly allege that if they wish to allege that when they amend their complaint, if the Court dismisses this action.

***9** There was reference to various mental health laws. I really don't think — I don't for a second say that this is an unimportant case, Your Honor, that the gravamen of this case is somehow, you know, unimportant or that the mental health (indiscernible) — plaintiffs are talking about are unimportant or the subject matter is — there are claims under those laws in this case.

There certainly aren't claims against Vanguard under those laws in this case. I'm not sure what they have to do with this argument in any way but irrespective of what happens here, Plaintiff pointed this out in their opposition brief.

This motion is about wanting only one payor defendant and their case will go on to the next hearing against Aetna, the various Aetna affiliates and other payor defendants. So whatever Your Honor does with this motion, including if Your Honor grants the motion and allows them to re-plead, it will not impact their (indiscernible) — to seek redress under whatever laws they feel, for whatever wrong that they feel has occurred.

The final thing I'll say and I think we have a slight disconnect here between what my point was and I'll assume that (indiscernible) — clearly. I actually don't think Plaintiff pleaded in the alternative. So I wasn't saying that Plaintiff is pleading in the alternative and has the right to plead in the — or at least not with respect to that fact allegation.

First, as I think Ms. Dugan pointed out when we were here at the status conference months ago and gave Your Honor a summary. What plaintiff have done here is (indiscernible) — pleading in the alternative. They are attempting, to the extent they are at all, to asset alternative facts and that's not permitted, you can't assert alternative facts.

You can assert alternative legal theories but the facts that you need to assert to establish your claim, there's a reason that you have to provide facts and that's because they are what you believe to be true. You can't say it might have been green or it might have been red, you need to actually assert facts that are supporting your claim.

But putting that aside, even if they were permitted to, they don't plead alternative facts here. They plead paragraph, after paragraph, after paragraph, that Aetna and its affiliates deceived the payor defendants, including Vanguard. That's not an alternative pleading that they stated, that is an assertion. Whether it is a general and therefore not really a factual assertion or not, that is an assertion that they make repeatedly and at no time do they say may or may not have done so. They say that Aetna did that vis-a-vis Vanguard.

So it's a much different situation and again, I think the fact that they do that, I shouldn't say fact. That they do that belies the whole agency argument. They couldn't possibly have been the agent for Vanguard while deceiving Vanguard with respect to the matters that plaintiffs allege in this case, Your Honor. That's all I have, Your Honor. Thank you very much, I would be happy to answer any questions.

THE COURT: I don't have any questions for either of you. The briefing was very helpful and it was very thorough and since I've had it for months, I've had the opportunity to go over it repeatedly and I thank you for the concise and detailed arguments and your excellent briefing. So I'm going to give you a decision now.

This motion is before the Court, filed by Defendant Vanguard Group, Inc., will be referred to as Vanguard, pursuant to Rule 4:6-2(e). According to the complaint, Vanguard employed a parent or guardian of Patient A.B., who received treatment at **Healing at Hidden River**, LLC, the Plaintiff in this case and who will be referred to as Plaintiff throughout this oral opinion.

***10** She, A.B., was one of 16 patients who were admitted for inpatient behavioral healthcare services with Plaintiff. The claim is that Vanguard is directly and derivatively liable for underpayment of medical claims related to the treatment of A.B., whose

parent or guardian was employed by Vanguard. The purported liability arises from Vanguard's role as an employer sponsor of a self-funded health plan, as well as the conduct of its alleged agents, Aetna Life Insurance Company and its affiliates, including Global Claim Services, also referred to as GCS.

For healthcare services, Vanguard's agent for certain services is Aetna Life Insurance Company, ALIC, and its Aetna affiliates, including GCS. Specifically, the complaint alleges that payment responsibilities were managed through GCS, which is accused of engaging in quote-on-quote, "Repricing practices," that reduced the amount that is paid to Plaintiff for its services. This repricing allegedly resulted in gross underpayments, on average, only 20 percent of the quote, "Usable, customary and reasonable," rates were paid, those are the UCR rates.

For Patient A.B., the disputed claim list, the DCL, as set forth in the complaint at page 23 shows an outstanding balance of $92,547.92 for 49 days of treatment, dating from December 12th, 2024. The complaint states that prior to the Plaintiff's (sic) admittance, representatives — excuse me, prior to the patient's admittance, representatives of Aetna and Vanguard orally pre-affirmed that payment would be at 70 percent of the UCR and also represented that the rate would not be calculated with reference to Medicare rates. However, after the services were rendered, Plaintiff alleges that Vanguard, through Aetna and its affiliates, did not fulfill that affirmed payment arrangement and instead applied arbitrary repricing methodologies.

Plaintiff claims that it relied on the oral affirmations in agreeing to provide treatment to A.B. The complaint further accuses Vanguard along with other, quote-on-quote, "Payor defendants," of either being negligent in their due diligence and oversight of Aetna and GCS's repricing activities or knowingly approving or adopting the repricing practices that led to underpayment and this is at the complaint, pages 10 through 15 which includes all of the payor defendants listed there.

The result, according to the complaint, is that funds left in trust with Aetna by Vanguard for the purpose of paying for patient healthcare were diverted, resulting in insufficient payment to Plaintiff and exposing the patient and the patient's family to potential medical debt. Vanguard is named as both directly liable for failing to insure correct payment and derivatively liable for the actions of its agents, Aetna and GCS, for example, based on agency principles, as articulated in the complaint.

The allegations assert that Vanguard, by participating in these arrangements and not intervening to prevent underpayment or exploitative repricing is responsible for the shortfall. Additionally, the complaint alleges that Vanguard and other payors did not adequately disclose the financial implications and risks associated with the repricing practices, including the possibility of significant balance billing for patients, increased administrative fees and profits for the managed care entities at the expense of both the provider and the patient.

The Court is going to dispense with a summary of the parties' arguments. The record speaks for itself, both the briefing, the certifications attached thereto and the arguments made here today. The Court will go straight into the analysis and its ruling.

***11** The standards governing motions to dismiss, pursuant to Rule 4:6-2(e) are well established. For motion to dismiss, the Court must draw the relevant facts from the pleading. Printing Mart Morristown versus Sharp Electronics Corp., 116 N.J. 739 at 746, Supreme Court of New Jersey 1989.

The Court accepts the facts alleged as true solely for the purpose of adjudicating the motion and confers on the Plaintiff the benefit of all reasonable inferences to be drawn from the pleaded facts, id. However, the Court is not required to accept legal conclusions or unsupported conclusory factual matters. The Court draws support for this point from DelBridge versus Office of the Public Defender, 238 N.J. Super 288 at 314, a Law Division opinion from 1989.

The Court is not concerned at this juncture with the Plaintiff's ability to prove the allegations of the pleading, Printing Mart, 116 N.J. at 746. Instead, the Court is required to examine the pleading through a generous and hospitable lens to determine if it is possible to discern the fundament of a cause of action from even an obscure statement of the claim, id.

See also Campbell versus Woodcliff Health and Rehab Center, 479 N.J. Super 64, at pages 70 through 71, Appellate Division 2024, for the same proposition quoting the Printing Mart case. Also see Velop, Inc., versus Kaplan, 301 N.J. Super 32 at 56, an Appellate Division case from 1997 which does the same.

With regard to the agency liability theory. In short, Plaintiff alleges that Vanguard, among others, acting as a principal, directed Aetna to underpay Plaintiff for healthcare services rendered. Plaintiff's motion papers argue that the relationship can be considered under theories of actual agency or apparent agency. This argument is at the opposition brief, pages 19 through 28.

A quote, "Agency relationship is created when one party consents to have another act on its behalf," Sears Mortgage Corp., versus Rose, 134 N.J. 326 at 337, Supreme Court of New Jersey 1993. And there is, quote, "The right of the principal to control the conduct of the agent," Arcell versus Ashland Chemical Company, 152 N.J. Super 471 at 494, Law Division 1977. Quote, "There need not be an agreement between parties specifying an agency relationship. Rather, the law will look at their conduct and not their intent or their words as between themselves but to their factual relation," Sears Mortgage Corp., 134 N.J. at 337.

Agency relationships can arise from the principal's actual or apparent authority to control the agent. Plaintiff argues that the Court can find either one in this complaint. Actual authority can be expressed or implied, Reynolds Offset versus Summer, 58 N.J. Super 542 at 557, Appellate Division 1959, certification denied, 31 N.J. 554, Supreme Court of New Jersey 1960.

Implied authority can be inferred from the conduct and general course of business dealings, Sears Mortgage Corp., 134 N.J. at 337 through 338. Meanwhile, apparent authority arises, quote, "The principal's actions have misled a third-party into believing that a relationship of authority in fact exists," and that is Gayles versus Sky Zone Trampoline Park, 478 N.J. Super 17 at page 24, an Appellate Division case from 2021, citing Mercer versus Weyerhaeuser Company, 324 N.J. Super 290, an Appellate Division case from 1999.

***12** The third-party's reliance on the principal's action must be reasonable in order for a court to find apparent authority, id. Plaintiff's allegations that Vanguard had actual authority to direct the conduct of Aetna must fail on this pleading. They are entirety conclusory and they lack sufficient factual averments to state a claim upon which relief can be granted. See, for example, complaint paragraph 42-A, quote, "Payor defendants manifested consent and or consented to Aetna defendants to act on a payor defendant's behalf and subject to its control with respect to the claims and issues in this action," and that's language from the complaint.

Plaintiff's argument that Aetna, including the payor defendants in its NAP Program, is sufficient proof of authority, respectfully misses the mark and the Court looks to complaints paragraphs 74 through 87 which explains the NAP Program. At best, the complaint suggests some sort of agreement between Aetna and the group of parties labeled the quote-on-quote payor defendants but it hardly establishes the essential elements of right to control. See Gayles, 468 N.J. Super at 27, quoting the statement third of agency Section 101.1.

Even under the Printing Mart liberal standard, this theory of liability cannot be gleaned from the complaint as presently constituted. Therefore, Plaintiff's claims against Vanguard based on agency will be dismissed without prejudice. See id., 116 N.J. at 772, which encourages claims to be dismissed without prejudice.

Plaintiff's attempts to bolster its arguments with freshly submitted exhibits is inappropriate and this is at the opposition brief at page 22, using exhibits not contained within the complaint. The Supreme Court stated in Printing Mart that the facts must be drawn from the face of the complaint, id., at — id., at 116 N.J. at 746.

Exhibits submitted for the first time in the opposition brief, responding to a motion to dismiss, therefore cannot be considered by the Court at this stage of the litigation for this purpose. Because the Court will not examine these exhibits at this time, there is no need to treat this submission as a motion for summary judgement, even though the rules might have empowered the Court to do so.

Rule 4:6-2 says that if on a motion to dismiss based on defense matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgement and disposed of as provided in Rule 4:46 and, "All parties shall be given reasonable notice of the Court's intention to treat the motion as one for summary judgement and a reasonable opportunity to present all material pertinent to such a motion." The Court declines to do so at this time. So the Court is not treating this as a motion for summary judgement.

Plaintiff's complaint fails to allege Vanguard's apparent authority. All of its allegations relating to their purported reliance on, quote, "The apparent agent relationship of Vanguard," are entirely conclusory and the opposition brief on pages 26 and 27 is where the Court looked to discern what it was that the plaintiffs were offering in opposition to the argument.

None of the paragraphs in the complaint cited by Plaintiff have proven would show that the Plaintiff entered into an agreement with Aetna because they relied on the belief that Aetna was acting at the direction of Vanguard. As to this theory, the motion is granted without prejudice.

With regard to the direct liability theory. The complaint sufficiently alleges direct liability by Vanguard. In sum, Vanguard knew or should have known that Aetna, someone that they were doing business with, was engaged in negligent or fraudulent tactics with its repricing scheme and this is set forth in the complaint, paragraphs 171 and 172 and 115, among others. And it plainly says that — and contains sufficient factual material in those paragraphs to clear Printing Mart's low bar.

***13** These parts of the complaint reference the repricing scheme that the payor — the payor defendant's knowledge of them and complaints about the schemes and their failure to do anything about it. This is not just a mere recitation of the elements of a theory of liability, as Plaintiff did with the agency claims. In other words, the complaint to this Court's reading strongly suggests that Vanguard, together with other payor defendants, are directly liable for Plaintiff's underpayment.

That this may be inconsistent with the agency theories is of no moment because pleading inconsistent theories is permissible under the law. See Farese versus McGarry, 327 N.J. 385 at 398, an Appellate Division case from 1989. The motion is going to be denied as to this point.

The negligence claim in count five is the next claim the Court has got to address. Even read under the generous standard of Printing Mart, the complaint fails to state a claim for negligence. The complaint states there is a duty from Vanguard flowing to Plaintiff and this is at complaint Paragraph 170. Does not describe the duty or state what the duty is or what facts trigger the duty.

Of course, duty is a quote-on-quote fundamental element of any negligence cause of action. See Shields versus Ramslee Motors, 240 N.J. 479 at 487, Supreme Court 2020. The paragraph cited by Plaintiff in their opposition comes closest to perhaps stating a claim for negligent misrepresentation and this is the opposition argument at pages 29 through 30 of the opposition brief, citing the complaints paragraphs 169 through 172 and 174 through 176.

These sections of the complaint repeatedly focus on statements made by payor defendants to the near exclusion of any other type of behavior. However, under New Jersey Law, a cause of action for negligent misrepresentation requires physical harm. See Reynolds versus Lancaster County Prison, 325 N.J. Super 298, an Appellate Division case from 1999, overruled on other grounds by Goldhagen versus Pasmowitz, 247 N.J. 580, Supreme Court of New Jersey 2021.

That is not what is alleged here. Purely, economic harm is alleged. To the extent the complaint attempts to state a claim for negligent supervision, Vanguard is correct in that Plaintiff has failed to plead facts that would give rise to the inference that a

supervisory relationship exists, as set forth in their motion brief at pages 9 through 11, citing New Mea Construction Corp., versus Harper, 203 N.J. Super 486, an Appellate Division case from 1985.

Also, the lack of a principal agent relationship helps to demonstrate the lack of a supervisor's supervisee, what might have been called master-servant relationship, the two are similar. For the above reasons, the motion will be granted without prejudice, as it relates to count five, the negligence claim.

With regard to count seven, the fraud claim. Fraud must be pled with particularity. A complaint sounding in fraud must satisfy Rule 4:5-8(a) and authority is found for that in State Department of Treasury Division of Investment, John E. McCormac versus Qwest Communication International, Inc., 387 N.J. Super 469 at 484, an Appellate Division case from 2006.

The cite and pleading standard exists to accord respect to contracts that such claims are invoked to avoid to shield potential defendant's reputations and deter baseless suits. In order to prevail on a common law fraud claim, Plaintiff must show that Defendant, one, made a representation or omission of material fact, two, with knowledge of its falsity, three, intending that the representation or omission be relied upon, four, which would result in a reasonable reliance and five, Plaintiff suffered damages. Depolink Court Reporting and Litigation Support Services versus Rockman, 430 N.J. Super 325 at 336, Appellate Division 2013, quoting Jewish Center of Sussex County versus Whale, 86 N.J. 619 at 624, Supreme Court of New Jersey 1981.

***14** The complaint states quite clearly at Paragraph 187 that Vanguard, among others, knew they were making false statement that they intended Plaintiff to rely on. These are not mere conclusory allegations. Read together with the rest of the complaint, the substance and intent of the alleged communications became obvious, i.e., to tell Plaintiff that they would receive one price for their services while knowing that they would, in fact, receive a lower one.

Here, unlike in the Depolink case, the Plaintiff pleads reliance, see in 430 N.J. Super at 337 and see the complaint at paragraphs 186 through 87 and 49 through 73, explaining the details, the alleged scheme, that Plaintiff supposedly fell victim to. Plaintiff pled all the elements of common law fraud with sufficient factual support. The motion to dismiss the fraud claim in count seven is denied.

With regard to the conspiracy claim in count eight. The complaint states a claim for civil conspiracy and the motion will be denied as it relates to this claim. In New Jersey, a civil conspiracy is a combination of two or more persons acting in consort to commit an unlawful act or to commit a lawful act by unlawful means, the principal element of which is an agreement between the parties to inflict the wrong against or injury upon another and an overt act that results in damages. That quote comes from Banco Popular North America versus Ghandi, 187 — I'm sorry, 184 N.J. 161 at 177, with internal quotations admitted.

A conspiracy exists if those involve understand its general objectives, accept them and make an implicit or explicit agreement to further those objectives. Plaintiff's complaint makes this out in granular detail. Initially, among other things, the complaint alleges unlawful acts, for example, civil fraud, committed by two or more parties. Vanguard argues that the complaint fails to allege that they understood the objectives of the conspiracy, accepted them and agreed to further them, in its motion brief at page 12.

However, the complaint explains how Vanguard, among others, erects claims to GCS to be quote-on-quote, “Repriced,” and this is discussed in the complaint at paragraphs 193 to 205. The complaint alleges with considerate factual detail Vanguard's knowledge of the alleged repricing scheme, its agreement to participate in it and its acceptance of its objectives.

Regarding other claims, counts one through four and count six, the motion relating to these claims are going to be denied. To the extent that the defense motion addresses these allegations at all, it does so in a footnote, motion brief at page 5, footnote 3. The Court is settled that, that's insufficient briefing and issues not briefed are waived. Telebright Corp. Inc., versus Director of

New Jersey Division of Taxation, 42 4 N.J. Super 384 at 393, an Appellate Division case from 2012. See also Lieblinq versus Garden State Indemnity, 347 N.J. Super 447 at 465 through 466, Appellate Division 2001, Kratovil versus Anqelson, 473 N.J. Super 484 at 536, a Law Division case from 2020.

Althouqh Vanguard does add some explanatory detail to their argument expanding upon it in their reply brief, the Court believes it's improper to raise it for the first time in the depth that it did in the reply brief, see Township of Warren versus Suffness, 225 N.J. Super 399 at 412, an Appellate Division case from 1988, citing State versus Smith, 55 N.J. 476 at 488, from 1970 and that, again, is a Supreme Court case. And that last part of the ruling is count one through four and six.

***15** I'll prepare an order and we'll upload it to E-Courts. All right, everyone, thank you very much. Have a good day.
MR. SILVER: Thank you, Your Honor.

THE COURT: Thank you very much.

MR. ESTES: Thank you, Judge.

(Off the record, back on the record)

MR. SILVER: With respect to Plaintiff's time line to re-plead any of the claims that were dismissed without prejudice. I just thought, in light of the fact that there's some overlap between this motion and the forthcoming motion of Aetna, that the deadline —

THE COURT: Why don't we stay any obligation to re-plead until we deal with the Aetna motion and then to the extent you're going to re-plead, amend or otherwise address whatever effect these rulings might have on your pleading, it's all done at one time.

MR. SILVER: Excellent, thank you, Your Honor.

THE COURT: Okay?

MR. SILVER: Perfect.

MR. ESTES: Does that mean that we also stay on our responsibility to respond to any of this?

THE COURT: Absolutely, absolutely.

MR. ESTES: All right, perfect.

MR. SILVER: One other thing —

THE COURT: You may respond to any amended pleading or anything like that.

MR. ESTES: Yeah, I would like to have a stay. So that I don't have to respond in-part now and then in-part when they amend.

THE COURT: No.

MR. ESTES: Because they're going to amend the (indiscernible) —

THE COURT: You mean — I didn't think there was anything pending that you owe a response to now.

MR. SILVER: I mean, he's filing —

MR. ESTES: No, having denied our motion on several of the —

THE COURT: Oh, you mean the timing?

MR. ESTES: Exactly.

THE COURT: Oh, that's stayed also.

MR. ESTES: Okay, thank you.

THE COURT: Do me a favor. As to those issues regarding the timing and stays of timing —

MR. ESTES: Do you want us to (indiscernible) — okay.

THE COURT: Yes, do an order on those. I'm going to do an order regarding the relief that I granted but as far as the stay relief that I just granted —

MR. ESTES: Yep.

THE COURT: — if you could do an additional order with regard to that.

MR. ESTES: Will do that.

MR. SILVER: Thank you, Your Honor. Judge, as to (indiscernible) — are you going to go back and grab the time. Ms. Dugan and I were speaking before outside the courtroom and we thought that perhaps the motion argument might be scheduled for the afternoon.

I'm going to make a suggestion if it's at the Court's convenience and the convenience for Aetna's Counsel, if maybe we could change the date so we could actually argue in the morning? I just feel that argument is going to go longer than this and seeing Your Honor's calendar and what goes on here —
THE COURT: Yeah, I would rather have you start the day —

MR. SILVER: Sure, Your Honor.

THE COURT: — because it's less likely that something would interrupt you, as happened here with this motion, with those landlord-tenant cases and what have you.

MR. SILVER: Sure.

MS. DUGAN: I have a conflict (indiscernible) —

THE COURT: Okay, well I — I'm going to tell Pauline to take a look because we're already booked into November and then I'm going out again on October 31st is my last day and I'm not back again until November the 12th. So it probably wouldn't be — let me take a look. We might be looking at like a four or five week adjournment.

***16** MR. SILVER: Okay.

THE COURT: All right? Hold on one second.

MR. SILVER: I think we're better off doing this in the morning.

MS. DUGAN: That's fine.

COURT CLERK: Yes, Judge?

THE COURT: Pauline, on the 23rd, we have a motion on the Hidden Healing — the **Healing at Hidden River** case?

COURT CLERK: Yes, at 1:30.

THE COURT: Okay, the attorneys and I agree with them, we would be better off putting that on a morning and I'm wondering if there's an upcoming morning event that we can swap them out and put that on at 1:30. Either — how does the rest of that week look for you in that morning?

MS. DUGAN: Your Honor, my apologies but I also have my colleague Adam (indiscernible) — going to be arguing the Aetna point.

THE COURT: Okay.

MS. DUGAN: And we have to check with him but the rest of that week for me, I have —

THE COURT: All right, so here's what I'm going to do. If you have to consult with someone else, then this is all for nought.

MS. DUGAN: Yeah, thank you, yes.

THE COURT: So here's what I would like you do. If you could, before the end of the week, the two of you get together or actually, the six of you, I guess, get together. Come up with a couple of mornings. Call Pauline and if she's got something she can swap out or take a morning event and swap it out with your 1:30 event, we'll do that, okay?

MS. DUGAN: Great, thank you.

THE COURT: Pauline, they'll give you a call.

COURT CLERK: Okay.

THE COURT: All right? So you should note on the calendar for that right now.

COURT CLERK: Yeah, I'm going to (indiscernible) —

THE COURT: Yeah, likely to be moved and swapped with something else, okay?

COURT CLERK: Okay.

THE COURT: All right, thank you very much.

COURT CLERK: All right, thank you.

THE COURT: All right. Thank you very much, I appreciate it. Good to see you all.

MR. ESTES: Thank you, Your Honor.

MR. SILVER: Thank you, Your Honor.

THE COURT: Take care, I'll see you when —

(Proceeding concluded at 3:54:45 p.m.)

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