NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

MHA, LLC, *Plaintiff*, v. ANTHEM, INC., ANTHEM INSURANCE COMPANIES, INC., THE ANTHEM COMPANIES, INC., HORIZON HEALTHCARE SERVICES, INC., HORIZON HEALTHCARE OF NEW JERSEY, INC. and ABC CORPS. 1–100, *Defendants.*	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: CIVIL PART ESSEX COUNTY Docket No.: L-6607-18 Civil Action **MEMORANDUM OPINION**

For Defendants Horizon Healthcare Services, Inc. and Horizon Healthcare of New Jersey: Andrew I. Hamelsky (argued and on the brief); Edward M. Koch (on the brief); Joshua E. Gajer (on the brief), White and Williams LLP

For Plaintiff MHA, LLC: Robert A. Agresta (argued and on the brief); Anthony K. Modafferi, III (argued and on the brief), The Agresta Firm, P.C.

Decided: June 13, 2019

HON. KEITH E. LYNOTT, J.S.C.

In this action seeking recovery of alleged underpaid invoices for medical services performed at a hospital, the Defendants Horizon Healthcare Services, Inc. and Horizon Healthcare of New Jersey, Inc. (collectively, "Horizon") move to dismiss the Complaint of the Plaintiff MHA, LLC ("MHA"). For the reasons set forth herein, the Court grants in part and denies in part Horizon's motion.

I

As this is a motion to dismiss pursuant to R. 4:6-2(e), the Court draws the facts from the Plaintiff's Complaint. It assumes such facts to be true solely for purposes of adjudicating this motion and confers on the Plaintiff all reasonable inferences from the pleaded facts. As the Court is required to conduct a painstaking assessment of the pleading, it summarizes the material allegations of the Complaint at some length.

The Plaintiff formerly owned and operated Meadowlands Hospital Medical Center ("Meadowlands"). Prior to a sale of all the operating assets comprising the hospital in December 2017, MHA rendered hospital and medical services to patients. In December 2017, MHA sold its assets, but retained all receivables related to patient care prior to the date of change of ownership, including the receivables that are the subject of this action. MHA also avers that, in relation to the open patient claims for which it was underpaid, it remains obligated to pay vendor invoices for services related to such patients.

Prior to the asset sale in December 2017, Meadowlands was a licensed general acute care hospital with a 230-bed capacity, including emergency room bays, medical/surgical beds, obstetrical beds, pediatric beds, adult ICU/CCU beds and intermediate bassinets. It maintained operating rooms and diagnostic facilities for the performance of a wide variety of diagnostic tests.

This case relates to services rendered to patients who were, at the time of such services, "covered for such care under healthcare plans insured, operated or administered" by Anthem, Inc. or one of its affiliates The Anthem Companies, Inc. or Anthem Insurance Companies, Inc. (collectively, "Anthem"). The Complaint alleges that Anthem "provided healthcare coverage to members and their dependents, as well as administrative services to various plans." The plans

afforded "out-of-network health, medical and hospital coverage, including emergency services coverage, in New Jersey to patients of plaintiff."

The Complaint avers that, at all relevant times, MHA's predecessor, Meadowlands, was an "out-of-network, or non-participating, healthcare provider, with respect to Anthem related defendant payors." Meadowlands provided "emergency or pre-approved non-emergency, medically necessary hospital and medical services to thousands of patients who, at all relevant times, were covered under healthcare plans sponsored, funded, operated, controlled and/or administered by the Anthem related defendant payors."

MHA asserts that there are 994 open patient accounts for which, as of September 7, 2017, Meadowlands had billed $18,335,355.79, but had received only $1,550,903.18 from Anthem. The Complaint alleges that these open patient accounts consist of 550 accounts involving Emergency Room care, "which is required to be paid at 100% of billed charges." The Complaint avers that these open accounts represent $2,779,849.33 in billed charges, for which Anthem paid $193,700.00, leaving a balance of $2,586,149.33. MHA alleges that 440 open patient accounts relate to patients receiving inpatient, outpatient, rehabilitation and same-day surgery "for which pre-authorization, approval and/or consent was obtained from Anthem to conduct the services and render care under the promise that Meadowlands would be paid appropriately." The Complaint alleges that these 440 accounts produced $15,555,506.46 in billed charges for which Anthem paid only $1,357,203.18, leaving a balance of $14,198,303.28.

MHA avers that, as to these patient accounts, its predecessor "rendered emergency and non-emergency pre-approved, medically necessary hospital and medical services—including inpatient, outpatient and same day surgeries." It avers that Meadowlands "timely filed clean claims for reimbursement from Anthem."

MHA avers that, prior to performing "several of the services," Meadowlands contacted Anthem "to request, and was provided by Anthem, pre-authorization and/or pre-certification to render the services." It relied on the pre-authorization and/or pre-certification in agreeing to provide services to these patients. It alleges that Anthem then refused "proper payment."

The Complaint alleges that, in other cases, Anthem informed Meadowlands that pre-authorization was not necessary as the services were of an urgent nature. However, Anthem subsequently refused "proper payment," asserting the services were not emergent.

In still other cases, Anthem communicated, "through word and deed," that there was coverage for initial treatment and that it paid for such treatment. But it then, without notice, refused to reimburse for subsequent, related treatment. In some instances, Anthem agreed to pay Meadowlands's invoice upon receipt, but thereafter failed to "honor its payment agreement, or failed to reimburse Meadowlands the proper amount."

The Complaint alleges that "[t]hroughout the parties' course of dealings and numerous forms of communication and interaction, Anthem voluntarily and freely engaged with and dealt directly with Meadowlands." Anthem did not disclose any impediment to such direct communications. Meadowlands relied upon the parties' "course of dealings."

MHA avers that, under the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd ("EMTALA"), and N.J.S.A. 26:2H-18.64, Meadowlands was required to render emergency treatment to any patient entering the facility, regardless of ability to pay. It alleges that, under New Jersey regulations, Anthem was required to pay Meadowlands 100% of its billed usual, customary and reasonable charges for all emergency services rendered to Anthem's subscribers.

MHA avers that "Anthem has purposefully availed itself of plaintiff's obligations under EMTALA to coordinate and implement its systematic scheme of underpaying Meadowlands for the hospital and medical services it has rendered to thousands of members and dependents of defendants' plans." It alleges that Anthem and Horizon "engaged in a systematic practice of downgrading coverage by a variety of nefarious methods including, without limitation, downcoding and bundling of claims submitted by plaintiff, as well as issuance of coverage denials to patients *after* they were admitted to the hospital emergency room and before emergency/urgent treatment was completed." (Emphasis in original). Anthem did so without sufficient medical or clinical information or consultation with attending physicians.

The Complaint alleges that among the practices employed by Anthem to downgrade coverage was a practice of advising patients and attending physicians that the patient was ready for transfer to a participating "in-network facility," even if the patient was not medically stable. Anthem did so even though the decision as to whether the patient was medically stable was one for the attending physician. Anthem also advised patient subscribers that it would only cover the remainder of their hospital stay at out-of-network rates and that the patients would thus bear substantially higher financial liability by continuing to receive treatment in a non-participating hospital, due to higher deductibles and copays. Anthem did so without examining the terms of the patients' benefit plans.

MHA avers that, as to the open accounts and as matter of business practice, Meadowlands "engaged in regular communications and discussions with Anthem regarding coverage, reimbursement, negotiation of disputes, and other issues." It submitted claims directly to Anthem and Horizon, both of which then processed the claims. When Anthem and Horizon

remitted underpayments to Meadowlands, together with explanations of benefits, Meadowlands engaged in numerous appeals of the defendants' payment decisions.

The Complaint alleges that, with respect to the open patient accounts that are the subject of this action, MHA exhausted the Defendants' appeal process by filing numerous unsuccessful appeals. MHA avers that "[d]efendants' appeal process is also futile, and plaintiff has not been provided access to a meaningful review process."

MHA alleges that the claims asserted in this case "do not arise under or implicate federal subject matter jurisdiction under the Employee Retirement Income Security Act (ERISA), or any other federal or statutory regulatory scheme." It asserts the action relates only to the amount of coverage to patients and the failure of the Defendants to reimburse the Plaintiff in the proper amounts. It alleges there is no dispute that the underlying medical benefits plans afford coverage to the patients for the services in dispute.

MHA avers that all causes of action asserted in this case arise from independent duties of the Defendants, including New Jersey prompt pay laws, statutes and regulations, and New Jersey laws, statutes and regulations governing reimbursement of out-of-network providers rendering emergency medical services. It further asserts that its claims rest upon "the express pre-authorization and/or pre-certification provided by the defendants to the plaintiff to induce plaintiff to render hospital and medical services with the promise of coverage and payment." MHA alleges that, in respect of the open patient accounts that form the basis of this claim, it is seeking relief on its own accord and not as an assignee of the rights of its patients.

MHA then sets forth allegations explicitly advanced "[i]n the Alternative Pursuant to R. 4:5-2." When one distills such allegations to their essentials, MHA asseverates that Anthem, as a Blue Cross Blue Shield licensee, participated in the BlueCard Program of The Blue Cross Blue

Shield Association. As a result, Meadowlands was entitled to reimbursement for services performed to Anthem's subscribers pursuant to the same payment rates and terms as are employed for Horizon subscribers under the in-network agreement between Meadowlands and Horizon. However, MHA asserts that Anthem and Horizon failed to reimburse Meadowlands in accordance with either the BlueCard Program or the terms of the network agreement.

MHA avers that "[a]t all times relevant, . . . the BlueCard Program enables Horizon and every Blue Cross licensee a single electronic network to process and adjudicate provider claims." Through the BlueCard program, "which is run by Horizon and the other Blue Cross licensees," a Blue Cross subscriber is able to receive care outside of the home area of his or her Blue Cross licensee.

MHA alleges that, when a provider renders services to a subscriber of a Blue Cross Blue Shield licensee through the BlueCard program, the provider submits the claim for reimbursement to the local Blue Cross licensee—here, Horizon. This "Host" plan entity "determines the price and then submits the claim to the member's (the employer's) contracted plan (the 'Home' plan)." The Home plan—here, Anthem—then adjudicates the claim employing standardized "edits" or adjustments established by the Blue Cross Blue Shield licensees through an automated system. The Host plan then pays the provider "according [to] the provider's fee schedule and the Home plan reimburses the Host plan and pays an access fee to the Host Plan for use of the its provider network."

MHA asserts there is "direct evidence that Anthem, Horizon and the Blue Cross licensees, through participation in the [Blue Cross Blue Shield] Association and specific committees and organizations within the Association, have agreed to use specific, wrongful edits in the processing of their claims through BlueCard and [National Account Service Company

LLC] and have discussed hospital and physician reimbursement issues, including their scheme to deny, delay and reduce reimbursement to hospitals and physicians in contravention of their contracts, their representations to hospitals and physicians." The Complaint avers that Blue Cross Blue Shield licensees "collectively decide what improper claims processing edits they will use." It asserts that Horizon and other licensees "agreed to use improper edits to cheat doctors and facilities such as Plaintiff not only in their national business through [National Account Service Company, LLC] and the BlueCard Program, but also agree to utilize such edits in their local business as well."

The Complaint alleges that "Anthem, Horizon and [other licensees] have agreed to implement certain systematic claims process to manipulate the hospital DRGs and Revenue Codes contained in UB04 claim forms submitted by MHA, LLC and other providers by 'downcoding' or 'bundling' claims." "Downcoding," according to the Complaint, "is a process by which an automated claims processing program denies or diminishes the payment of claims submitted by hospital facilities by arbitrarily, and without prior notice, changing the code assigned to a particular service to a less expensive one." MHA avers that "bundling" is a "process by which an automated claims processing program denies or diminishes the payment of claims submitted by physicians by arbitrarily, and without prior notice, combining the codes of two or more procedures into one." MHA asserts that "Anthem's and Horizon's automated processing systems also manipulate the data contained on MHA, LLC's standard claim forms by refusing to recognize 'modifiers'—codes that indicate degree of multiplicity, complexity or difficulty of the evaluation or procedure at issue."

MHA alleges that, when it acquired Meadowlands in 2011, the hospital and Horizon were parties to a Network Provider Agreement. When MHA acquired the hospital, the parties

executed an Assignment Agreement, Acceptance and Consent dated December 1, 2010 (referred to in the Complaint and herein as the "Acceptance Agreement"). Through that Acceptance Agreement, MHA succeeded to the rights, powers, privileges, benefits and interests under the Network Provider Agreement.

MHA alleges that Horizon did not execute the Acceptance Agreement for several years until MHA demanded an executed copy during negotiations over a new agreement. Appendix A to the Acceptance Agreement provided that the rates for hospital services set forth in the Appendix "shall be effective on or after the date of the completed sale connection [sic] of Meadowlands Hospital Medical Center by Liberty Health Systems to MHA, LLC and will remain in effect until such time that new rates are agreed upon." On August 12, 2011, MHA "executed an amended Appendix A to the Network Hospital Agreement setting forth revised rates."

MHA alleges that, as to Anthem subscribers receiving services at Meadowlands, Horizon processes "certain claims" for Anthem as the local Blue Cross Blue Shield licensee. In these instances, "Anthem relies upon the host plan, in this case Horizon, to process claims according to its own network provider agreement with the medical providers such as MHA in this case and then reimburses Horizon according to the SCCF number generated in the Blue Card system." MHA asserts that Anthem "can also escalate the claim at this plan-to-plan stage over the amount of reimbursement including medical necessity determinations and is responsible for the final claim determination and payment." MHA avers that:

> Notwithstanding Horizon's agreement with MHA, Anthem breached its obligations to pay MHA according to the benefits of its enrollees, and thereby neglected to adjudicate the claims properly, and thus breached its/their fiduciary duty to the plan subscribers, and to the extent that Anthem utilized the BlueCard claims processing protocols whereby Horizon acted in its capacity as "host plan,"

> Horizon failed to honor the terms of its contract with Plaintiff by, among other things, failing to price the claims properly for each claim that is the subject of this litigation.

MHA asserts it is a third-party beneficiary of Horizon's BlueCard agreement with Anthem "which was made with the intention that MHA be paid by Anthem according to Horizon's rate appendix and subsequent amendments if any."

MHA seeks relief against both Anthem and Horizon pursuant to ten causes of action as follows. In the First Count, the Plaintiff alleges a claim against both Defendants denominated as a claim for breach of implied contract. MHA avers that Anthem represents to its subscribers that they are permitted to seek emergency medical care at any hospital emergency room and will in such cases only be responsible for payment of applicable deductibles and copays; and that Anthem knew Meadowlands is required to treat all patients requiring emergency care.

MHA avers that "Anthem further indicated, by a course of conduct, dealings and circumstances surrounding the relationship, to Meadowlands that defendants would pay plaintiff usual, customary and reasonable ('UCR') amounts based on commonly utilized standardized pricing codes, referred to as 'DRGs' and 'Revenue Codes,' that are charged by healthcare facility providers for the same procedures, equipment and drugs with like/kind acute care facilities and departments in the same geographic area charge [sic] for the services rendered by Meadowlands." It asserts that in the "alternative," by a "course of conduct, dealings and the circumstances surrounding the relationship to Meadowlands," Anthem indicated that it would pay the Plaintiff according to MHA's network agreement, as amended, "according to mutually agreed per diems reflecting the services provided to Anthem enrollees."

MHA also alleges that, "by a course of conduct, dealings and the circumstances surrounding the relationship, to Meadowlands that it would honor, inter alia (a) its

representations to Meadowlands that the services rendered were authorized and/or pre-certified, (b) its representations to Meadowlands that preauthorization was not required, e.g., emergent or urgent care, and/or (c) its payment agreement to correctly pay for services that are medically necessary." It avers that it rendered medically necessary services to patients covered by Anthem-sponsored, insured or administered plans and expected proper compensation.

The Complaint alleges that "[d]espite indicating to Meadowlands by a course of conduct, dealings and the circumstances surrounding the relationship that defendants would properly reimburse plaintiff for either its actual charges as an out-of-network provider or its UCR rates, defendants failed to do so." It asserts the failure of the defendants to pay "the reasonable value of the services" constitutes a breach of implied contract between the Defendants and Meadowlands.

In the Second Count, explicitly pled in the alternative, MHA lodges a claim for breach of contract. MHA asserts that "some or all of the claims at issue in this litigation were adjudicated as payable claims by Horizon (the 'host plan') on Anthem's behalf, and in those cases where such claims were adjudicated according to Plaintiff's network agreement with Horizon, Horizon failed, refused and neglected to properly price the claims according to the DRGS and Revenue Coded appearing on the face of the Plaintiff's formal bill for services, known as UB04." MHA alleges both that Anthem and Horizon repudiated their obligations under the Network Hospital Agreement when Anthem sought to avoid payment by denying claims and refusing to adjudicate them under the BlueCard system and Horizon repudiated its obligations under this Agreement when it paid claims for a lesser amount than determined under the payor appendix of the Network Hospital Agreement.

MHA further alleges that, when processing and adjudicating claims and making direct payments to Anthem's subscribers for services rendered by Meadowlands, "Horizon's legal

status is that of an agent-fiduciary," and it "incurred liability to Plaintiff when it failed to properly adjudicate the benefit and pay the Plaintiff's claim." The Complaint alleges that "[a]s a result of Anthem and Horizon's failure to pay claims pursuant to the [Blue Cross and Blue Shield] Association protocols and employment of arbitrary, and aberrant claims processing methodologies thus employed to reduce, deny or otherwise frustrate payment to Plaintiff, Anthem and Horizon have breached the terms of Horizon's Network Hospital Agreement as amended with plaintiff."

The Third Count, also pleaded in the alternative, sets forth a claim for breach of the covenant of good faith and fair dealing. The Complaint avers that the Defendants "arbitrarily, unreasonably, or capriciously, with the objective of preventing Plaintiff from receiving its reasonably expected fruits under the network contract to the extent that defendant Horizon exercised any discretion in pricing the Plaintiff's lawful [sic] and thereby breached the duty of good faith and fair dealing, and also breached Unfair Claims Settlement Practices and thereby unfairly dealt with Plaintiff in bad faith and without cause and breached the implied term of good faith and fair dealing."

The Fourth Count of the Complaint lodges a claim for unjust enrichment. This Count avers that the Defendants refused to pay Meadowlands correctly for hospital services Meadowlands provided to patients covered under plans sponsored, funded, insured and/or administered by Anthem, contrary to such plans, the common law and statutory and regulatory obligations of the Defendants.

MHA alleges that, to satisfy its obligations to subscribers, Anthem required services performed by Meadowlands, including emergency medical services. It contends that the Defendants received a benefit from the services rendered by Meadowlands because the

performance of such services enabled Anthem to fulfill its contractual obligations to subscribers, employers and other organizations. MHA also asserts that Anthem's adjudication of MHA's claims pursuant to the BlueCard system satisfied Anthem's representations to plan participants concerning the benefits of Anthem's status as a Blue Cross Blue Shield licensee.

MHA avers that Anthem has "enriched itself unjustly at the expense of Meadowlands." It asserts that both Defendants have been unjustly enriched through the use of funds "that earned interest or otherwise added to their profits when said money should have been paid in a timely and appropriate manner to plaintiff." It alleges that, because Meadowlands was legally obligated to treat Anthem's subscribers with emergency medical care, an insurer such as Anthem is "unjustly enriched if it fails to pay the hospital in full for the costs incurred in rendering the necessary treatment to the insurer's enrollees." MHA avers that, as it did not participate in network with Anthem, it has no adequate remedy at law.

The Fifth Count asserts a claim for relief under the principle of quantum meruit. The Complaint alleges that "[a]lthough no formal contract exists between the plaintiff and Anthem it is appropriate for this Court to recognize one implied in fact because the plaintiff performed services under circumstances in which the parties understood and intended compensation to be paid." MHA alleges that Anthem acquiesced in the provision of services by Meadowlands; that it was aware that Meadowlands expected payment; and that Anthem has been unjustly enriched. MHA avers that it is entitled to compensation for the value of its medically necessary services rendered to Anthem's various plans and networks under the doctrine of quantum meruit.

In the Sixth Count, MHA sets forth a claim for relief grounded in promissory estoppel. It avers that, for certain patients and claims, "Anthem made promises to Meadowlands that proper coverage for hospital and medical services would be afforded to members of its plans, including

by pre-authorizing and/or pre-certifying services, or paying for initial care, and then in each instance refusing to issue proper payment when the bills were submitted by Meadowlands." It avers that Meadowlands reasonably relied on these promises and that Anthem expected, or reasonably should have expected, Meadowlands to do so.

In the Seventh Count, MHA alleges that Anthem "negligently misrepresented, or otherwise inaccurately represented and verified to Plaintiff that its enrollee/subscribers were eligible and covered," including by way of pre-authorization and pre-certification of hospital services, and that it would pay for the services provided to its enrollees/subscribers. It avers that Meadowlands reasonably relied upon such representations to its detriment when Anthem underpaid for the services rendered or otherwise refused to pay the claims in the proper amount contrary to the pre-authorization or pre-certifications and continuity of care obligations owed to patients.

In the Eighth Count, the Plaintiff asserts a claim for interference with economic advantage. It claims that Meadowlands had a reasonable expectation of economic advantage or benefit of which Anthem was or reasonably should have been aware. MHA alleges that "Defendants wrongfully interfered with plaintiff's expectancy of economic advantage or benefit" that Meadowlands would have realized but for the wrongful conduct.

In the Ninth Count, the Plaintiff alleges a private right of action under New Jersey statutes and regulations that, it avers, "require[] that hospitals provide emergent and urgent care to all patients, regardless of ability to pay, or the source of payment" and that require payors "to specifically notify their subscribers that they are entitled to have 'access' to emergency services, and 'payment of appropriate [health] benefits' for emergency conditions." MHA alleges that when an out-of-network provider such as Meadowlands provides emergency services, it must

receive a "large enough amount to ensure that the patient is not balance billed, that is, charged for the difference between the insurer reimbursed amount and the provider's billed charges."

MHA asserts that Anthem is obligated to pay "one-hundred percent (100%) of plaintiff's UCR fees, less the patient's applicable copay, coinsurance or deductible for all patients admitted through the hospital emergency room." It asseverates that Anthem has not properly paid for the emergency services rendered in contravention of New Jersey regulations.

In the Tenth Count, MHA alleges a private right of action under the New Jersey Health Information Network and Technologies Act ("HINT"), N.J.S.A. 17B:30-23, 17:48-8.4, 17:48A-7.12, 17:48E-10.1, 17B:26-9.1, 17B:27-44.2 and 26:2J-8.1, together with the Health Claims Authorization, Processing and Payment Act ("HCAPPA") and regulations promulgated thereunder. It avers that pursuant to this regulatory scheme "defendants are required to remit payment to a healthcare provider for an 'eligible' non-capitated claim for medical services no later than thirty (30) calendar days following electronic receipt of the claim by defendants, or forty (40) calendar days following non-electronic receipt of the claim by defendants." In the alternative, the defendants were required to notify Meadowland of a denial or dispute and the specific reasons for the same and request any missing additional information to process the claim, pursuant to the HCAPPA. It avers that all overdue payments bear interest at a rate of 12% per annum.

MHA avers that "defendants as a matter of practice and/or policy delayed payment of properly submitted claims from plaintiff and did not pay claims correctly, and they did not pay interest in delayed payments." It alleges these practices violated HINT and HCAPPA.

II

A motion to dismiss for failure to state a claim is disfavored and granted only in rare cases. In Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 772 (1989), the Supreme Court stated that trial courts must accord such motions "meticulous and indulgent examination" and, accordingly, should grant them in only "the rarest of instances." See also Smith v. SBC Commc'ns, Inc., 178 N.J. 265, 282 (2004) (a motion to dismiss "should be granted only in rare instances and ordinarily without prejudice") (internal quotation marks omitted).

On a motion to dismiss a complaint pursuant to R. 4:6-2(e), the Court must determine whether "a cause of action is 'suggested' by the facts." Printing Mart-Morristown, 116 N.J. at 746 (quoting Velantzas v. Colgate-Palmolive Corp., 109 N.J. 189, 192 (1988)). The Court is required to examine the complaint "in depth and with liberality" to ascertain "whether the fundament of a cause of action may be gleaned from an obscure statement of claim." Ibid.

The Court must accept the facts alleged in the pleading as true. Velantzas, 109 N.J. at 192 (a court "must assume the facts as asserted by plaintiff are true and give her the benefit of all inferences that may be drawn in her favor") (internal quotation marks omitted); Malik v. Ruttenberg, 389 N.J. Super. 489, 494 (App. Div. 2008) (the court must "accept as true the facts alleged in the complaint, and credit all reasonable inferences therefrom"). The pleading party is entitled to "every reasonable inference of fact." Printing Mart-Morristown, 116 N.J. at 746. The Court is "not concerned at this stage with whether the plaintiff can prove the facts averred in the Complaint," but merely with the legal sufficiency of the pleading. Ibid.

The examination of the complaint "should be one that is at once painstaking and undertaken with a generous and hospitable approach." Ibid. See also Piscitelli v. Classic Residence by Hyatt, 408 N.J. Super. 83, 103 (App. Div. 2009) (the court must review the

complaint with "a generous and hospitable approach") (internal quotation marks omitted). The court must "search the complaint in depth and with liberality" to identify the causes of action asserted. Lieberman v. Port Auth. of N.Y. & N.J., 132 N.J. 76, 79 (1993) (internal quotation marks omitted). In addition, "[a] complaint should not be dismissed under this rule where a cause of action is suggested by the facts and a theory of actionability may be articulated by way of amendment." Rieder v. N.J. Dep't of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987).

In examining a motion to dismiss, "the inquiry is confined to a consideration of the legal sufficiency of the alleged facts apparent on the face of the challenged claim," and therefore, "[t]he court may not consider anything other than whether the complaint states a cognizable cause of action." Ibid. (internal citation omitted). Thus, the Court may not examine materials extrinsic to the complaint itself in adjudicating a motion to dismiss. An exception exists for exhibits attached to the complaint, matters of public record and materials that the plaintiff relies upon in the complaint or that are integral to the plaintiff's claims. Banco Popular N. Am. v. Gandi, 184 N.J. 161, 183 (2005) ("In evaluating motions to dismiss, courts consider allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim.") (internal quotation marks omitted).

The Rules of Court require only that a pleading contain "a statement of facts on which the claim is based, showing that the pleader is entitled to relief, and a demand of judgment for the relief to which the pleader claims entitlement." R. 4:5-2. The purpose of a pleading is not to provide a complete recitation of every possible fact or argument available, but to fairly apprise the adverse party of the claims and issues to be raised at trial. Dewey v. R.J. Reynolds Tobacco Co., 121 N.J. 69, 75 (1980) ("Although more by way of facts regarding the design defect would have been enlightening, see Rule 4:5-2, we agree with the Appellate Division's finding that '[t]o

the extent that plaintiff's complaint was deficient, the judge properly looked to the entire record, giving plaintiff every favorable inference,' 225 N.J. Super. at 382 n. 5, 542 A.2d 919, and that the trial court had correctly concluded that the complaint was sufficient to support a claim of design defect.").

III

When its position is distilled to its essentials, Horizon asserts that there is no basis upon which MHA could possibly recover a judgment against Horizon under any of the theories of liability alleged in the Complaint. Horizon points out that the sole allegations lodged by MHA relate to underpayment of bills for medical services MHA rendered to subscribers of medical benefits plans that Anthem and not Horizon sponsored, insured or administered. In such circumstances, Horizon asserts this case, at best, results from a dispute with Anthem for which Anthem alone would bear any liability, whether for breach of contract or in respect of any of the equitable or statutory grounds for liability pleaded by MHA.

Horizon contends that, even accepting as true all of the allegations of the Complaint, the only role Horizon played in the handling of the invoices for the services Meadowlands performed for Anthem subscribers was to provide information to Anthem concerning the rates applicable under the Network Provider Agreement and otherwise to facilitate payment of claims by Anthem. Put differently, Horizon asserts it acted at all times in relation to the claims at issue as an agent for Anthem. Horizon argues that, in such circumstances, it cannot bear liability to MHA for any alleged breach of contract by, or other conduct of, Anthem in connection with the adjudication of MHA's claims for payment.

Horizon also asserts that it is party to a contract with MHA's predecessor, namely the Network Provider Agreement, pursuant to which Meadowlands provided services to Horizon

subscribers and, Horizon contends, other BlueCard enrollees. Because Meadowlands and Horizon were parties to such an "in network" contract, Horizon asserts that all the implied contract and quasi-contract theories pleaded by MHA necessarily fail as against Horizon.

The Court largely agrees with Horizon's position. Even a liberal and hospitable reading of most of MHA's Complaint—namely, the First and Fourth through Tenth Counts—discloses that MHA asserts in essence that it performed out-of-network medical services to subscribers of medical benefit plans sponsored, insured or administered by Anthem. These Counts of the Complaint aver that Horizon functioned as an agent of Anthem in connection with all the actions Anthem allegedly performed or failed to perform as to MHA's bills for services rendered to Anthem subscribers when Meadowlands provided such out-of-network medical services to these patients. Indeed, MHA explicitly acknowledges the nature of the relationship between Horizon and Anthem in Paragraph 80 (as well as Paragraphs 108 and 109) of the Complaint.

In the First Count, MHA alleges the existence and breach of an implied contract between Meadowlands and Anthem. An implied contract, or an implied-in-fact contract, "is in legal effect an express contract." St. Paul Fire & Marine Ins. Co. v. Indem. Ins. Co., 32 N.J. 17, 23 (1960). It differs from an express contract only in respect of the evidence used to establish its existence—specifically, proof that the "parties' agreement and assent thereto have been manifested by conduct instead of words." St. Barnabas Med. Ctr. v. Cty. of Essex, 111 N.J. 67, 77 (1988). The relevant inquiry is the significance of the parties' actions as viewed by a reasonable person engaged in the custom or trade. St. Paul Fire & Marine Ins. Co., 32 N.J. at 24. Moreover, like express contracts, implied-in-fact contracts "depend on mutual agreement and intent to promise." St. Barnabas Med. Ctr., 111 N.J. at 77 (internal quotation marks omitted).

MHA avers that it was an out-of-network provider of medical services to Anthem subscribers. It asserts that an implied contract arose from express assurances Meadowlands received from Anthem that the out-of-network services Meadowlands proposed to deliver to the patients were either pre-authorized or that the services were in the nature of emergency serves as to which no such pre-authorization was necessary. MHA thus alleges that Meadowlands interacted directly with Anthem in securing such pre-certification or pre-authorization for the services performed by MHA or in obtaining agreement that such authorization was unnecessary. Indeed, when one examines Paragraphs 85 to 95 of the Complaint, limning the course of dealing that MHA contends gave rise to an implied contract, each such allegation refers exclusively to Anthem.

There is no averment applicable to the First Count of the Complaint that Meadowlands had direct interaction with Horizon as to the services rendered to Anthem subscribers. The Complaint instead alleges that, insofar as out-of-network services are concerned, Meadowlands contacted Anthem, billed Anthem and expected payment from Anthem. Inasmuch as the patients to whom Meadowlands provided out-of-network emergency or pre-authorized services were participants in plans that Anthem and not Horizon sponsored, insured or administered, any contacts Horizon did have with Meadowlands in respect of such treatment rendered to these patients was manifestly in an agency capacity and the Complaint so alleges.

As implied contract is, in legal effect, an express contract, St. Paul Fire & Marine Ins. Co., 32 N.J. at 23, a claim for breach of implied contract requires the plaintiff to establish the same elements as for a claim for breach of contract. Thus, the plaintiff must plead and prove the existence of a contract, the parties, the material terms and a breach (together with damages).

In the circumstances here, MHA has not alleged facts establishing an implied contract as between Meadowlands and Horizon. Based on the allegations of MHA's Complaint—asserting out-of-network emergency or pre-authorized services provided to Anthem subscribers—any such implied-in-fact contract arose and existed, if at all, as between Meadowlands and Anthem.

The mere conclusory assertion that both Defendants breached the implied contract that allegedly arose between Anthem and Meadowlands is insufficient to establish an implied contract as between Horizon and Meadowlands or breach of the same by Horizon. Put differently, this assertion alone does not objectively establish that there was a course of dealings between Horizon and Meadowlands that evinces their assent to the implied contract alleged here. St. Barnabas Med. Ctr., 111 N.J. at 77.

The Court is aware that, in another case pending before it, it determined a pleading lodged by MHA stated facts sufficient to establish a claim for breach of implied contract. However, in that case, MHA pleaded facts that the healthcare insurer had, via a course of dealing with Meadowlands, conducted itself in a manner as to give rise to an implied contract to pay for pre-approved or emergency services performed by Meadowlands for subscribers of medical benefits plans sponsored, insured or administered by the defendant. Inasmuch as all the facts pleaded here as to an implied contract relate to Anthem and not Horizon, the Court finds that in this case there is not at the present time a claim for relief stated as against Horizon for breach of an implied contract to which it was a party.

For essentially the same reasons, the Complaint does not state a claim for relief against Horizon for liability in quasi-contract, whether under a theory of unjust enrichment (Count Four), quantum meruit (Count Five) or promissory estoppel (Count Six). The Court addresses separately each potential basis for relief.

A quasi-contractual obligation is "imposed by the law for the purpose of bringing about justice without reference to the intention of the parties." Weichert Co. Realtors v. Ryan, 128 N.J. 427, 437 (1992) (quoting St. Barnabas Med. Ctr., 111 N.J. at 79) (internal quotation marks omitted). To that end, a plaintiff may recover in quasi-contract under a theory of unjust enrichment upon showing that "the defendant received a benefit and that retention of that benefit without payment would be unjust." VRG Corp. v. GKN Realty Corp., 135 N.J. 539, 554 (1994). Similarly, quantum meruit is a quasi-contract remedy that permits recovery of "the reasonable value of services rendered" when the performing party "confers a benefit with a reasonable expectation of payment." Weichert Co. Realtors, 128 N.J. at 437.

The Plaintiff does not allege that Meadowlands conferred a benefit upon Horizon by performing the out-of-network services to Anthem subscribers, such as by enabling Horizon to satisfy contractual or statutory obligations Horizon had to such subscribers. Instead, the Complaint alleges that the services Meadowlands rendered to Anthem subscribers enabled Anthem to discharge its obligations to its own subscribers and thus benefitted Anthem. In such circumstances, it is difficult to discern how Horizon has "received a benefit" from the activity alleged in the Complaint or how Horizon's retention of that benefit absent payment would be "unjust." VRG Corp., 135 N.J. at 554.

The Complaint likewise does not allege that Meadowlands reasonably expected payment from Horizon for its out-of-network services to members of plans sponsored, insured or administered by Anthem. Weichert Co. Realtors, 128 N.J. at 437. Instead, it is readily apparent from examination of the Complaint that, to the extent it asserts Meadowlands performed its services on an out-of-network basis, MHA alleges Meadowlands expected remuneration from

Anthem. Accordingly, MHA has not alleged facts supporting a claim sounding in quantum meruit as against Horizon.

MHA's remaining theory for potential recovery in quasi-contract is the doctrine of promissory estoppel. The four elements of a promissory estoppel claim are the following: "(1) a clear and definite promise, (2) made with the expectation that the promisee will rely on it, (3) reasonable reliance upon the promise, (4) which results in definite and substantial detriment." Lobiondo v. O'Callaghan, 357 N.J. Super. 488, 499 (App. Div.), certif. denied, 177 N.J. 224, 827 (2003).

The Complaint does not allege a clear and definite promise that Horizon representatives would MHA for the out-of-network services provided to Anthem subscribers. Instead, as noted above, MHA avers that Meadowlands received such assurances from Anthem. At best, one could interpret the Complaint to allege that Horizon assured Meadowlands of payment by Anthem. In the circumstances, the Complaint as presently pleaded does not state a claim against Horizon for promissory estoppel.

It is also true that Horizon was at all relevant times party to an "in network" contract with Meadowlands, as the pleading explicitly acknowledges. At minimum, that contract—the Network Provider Agreement—governs the relationship between Horizon and Meadowlands/MHA. In such circumstances, MHA's claims against Horizon predicated on breach of an implied contract or quasi-contract are unsustainable as a matter of law and logic. Kas Oriental Rugs, Inc. v. Ellman, 394 N.J. Super. 278, 286 (App. Div. 2007) ("An implied contract cannot exist when there is an existing express contract about the identical subject.").

MHA contends on this motion that, because it alleges that Meadowlands provided services to Anthem subscribers on an out-of-network basis, there is a factual issue established by

the Complaint as to that matter that the Court should not—and indeed cannot—resolve on a motion to dismiss. It contends that Horizon's efforts to dispute the out-of-network status of Meadowlands in relation to Anthem patients are grounded in extrinsic facts—facts that are "dehors the record"—submitted to the Court via Certification. Instead, MHA asserts the Court must accept as true the factual averment in the Complaint as to out-of-network services provided by Meadowlands.

This contention requires the Court essentially to ignore the Network Provider Agreement that MHA itself has attached to the Complaint as an Exhibit. Inasmuch as MHA has relied upon the Network Provider Agreement for a portion of its Complaint—namely, the Second and Third Counts—it is permissible for the Court to examine that Agreement in its assessment of the legal sufficiency of the allegations of the Complaint. Banco Popular N. Am., 184 N.J. at 183 ("In evaluating motions to dismiss, courts consider allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim") (internal quotation marks omitted).

When one examines the Agreement, it is readily apparent that it is fundamentally at odds with the claim that, at least in respect of Horizon, Meadowlands was an out-of-network provider. Instead, to the degree Horizon bears any liability to MHA for underpayment of claims submitted by Meadowlands in respect of Anthem (or Horizon) subscribers, Horizon's liability is determined by reference to the Network Provider Agreement. In such circumstances, the claim as presently pleaded for liability as to Horizon predicated on a breach of an implied contract or quasi contract cannot survive the scrutiny of a motion to dismiss.

MHA avers in Paragraphs 105 through 107 of the Complaint that Horizon repudiated the Network Provider Agreement, presumably rendering it unenforceable and a nullity as to

Meadowlands, and thereby permitting a claim for relief on the basis of implied or quasi contract. Although MHA employs the term repudiation, the facts asserted in relation to such claim are in essence that Horizon failed to apply the appropriate rates for payment of claims established by the Agreement. In other words, MHA avers that Horizon repudiated the Network Provider Agreement by failing to adhere to its terms and conditions.

A claim for repudiation of a contract requires more than a showing that the counter-party did not comply with its terms. Instead, it requires proof of "a definite and unconditional declaration by a party to an executory contract—through word or conduct—that he will not or cannot render the agreed upon performance." Ross Sys. v. Linden Dari Delite, Inc., 35 N.J. 329, 340–41. Stated differently, the other party must have communicated its intention to repudiate the contract or committed an act before performance was due that is reasonably interpreted to mean the party would not perform. Restatement (Second) of Contracts § 250 (Am. Law Inst. 1981).

There are no such facts pleaded in the Complaint at the present time. The only pleaded facts (see Paragraphs 105 to 107) allege, at most, that Horizon's performance under the Network Provider Agreement was deficient, warranting relief for breach of contract.

The Complaint similarly fails to allege viable causes of action sounding in tort as against Horizon. The pleading (Count Seven) includes a claim for negligent misrepresentation, which arises when the defendant "negligently made an incorrect statement of a past or existing fact, . . . the plaintiff justifiably relied on [such statement] and . . . his reliance caused a loss or injury." Masone v. Levine, 382 N.J. Super. 181, 187 (App. Div. 2005) (citing Kaufman v. i-Stat Corp., 165 N.J. 94, 109 (2000)). Although the Complaint alleges a false or inaccurate expression of an intention to pay for the services to Anthem subscribers, it does not aver that Horizon committed

such negligent misrepresentations. Instead, examination of Paragraphs 145 to 148 of the Complaint reveals that the Plaintiff asserts that Anthem—and Anthem alone—did so.

The claim for interference with prospective economic advantage set forth in Count Eight also fails. A cause of action for tortious interference with prospective economic advantage must allege facts giving rise to a "reasonable expectation of economic advantage." Printing Mart-Morristown, 116 N.J. at 751 (quoting Harris v. Perl, 41 N.J. 455, 462 (1964)). A plaintiff must allege facts showing (1) that it was "in pursuit of business"; (2) that the interference was intentional and done "with malice" (meaning that it was "without justification or excuse"); (3) that the interference "caused the loss of the prospective gain"—that is, but for the interference, there is a "reasonable probability" that the plaintiff would have received the anticipated economic benefit; and (4) that the injury caused damage. Id. at 751–52 (internal citations omitted).

Moreover, it is "fundamental" to a cause of action for tortious interference that it be "directed against defendants who are not parties to the relationship." Id. at 752. This is because the theory of tortious interference "was not meant to upset the rules governing the contractual relationship itself." Id. at 753. Therefore, "where a person interferes with the performance of his or her own contract, the liability is governed by principles of contract law," not tort law. Ibid.

Here, the Complaint fails to allege the nature of the prospective economic advantage that is the basis for the claim. Indeed, the entire Eighth Count averring the claim for tortious interference consists of vague, conclusory statements of the elements of the claim without any meaningful factual detail.

Although the Court is left to speculate about the economic advantage on which the claim is grounded, review of the remainder of the Complaint reveals that the prospective economic

advantage to which MHA apparently refers is the prospect of full payment for Meadowlands's services to Anthem subscribers. In other words, the Complaint alleges that, by failing to pay the amount due to Meadowlands for it services, Anthem and Horizon interfered with the economic advantage Meadowlands expected to derive from providing the services.

But it is axiomatic that a claim for tortious interference can only lie against a stranger to the advantageous relationship. Ibid. ((“[I]t is fundamental to a cause of action for tortious interference with a prospective economic relationship that the claim be directed against defendants who are not parties to the relationship”) (internal quotation marks omitted)). Given the allegations of the Complaint as to the role of Horizon in the processing of Meadowlands's claims for payment, it is not possible to conclude that it alleges a claim that Horizon interfered with a prospective economic advantage to which Horizon was a stranger. Indeed, the Complaint alleges that Horizon was a party to either the express or implied contract pursuant to which Meadowlands expected to realize the economic advantage that is the foundation of its claim. At minimum, the Complaint alleges that Horizon acted in an agency capacity for Anthem in denying Meadowlands the full payment it expected for its services.

Even granting that the economic advantage MHA relies upon for this claim is that arising from the relationships between Meadowlands and the patients, the tortious interference alleged in Complaint is conduct by Anthem, in respect of which Horizon was, at most, an agent. As Horizon cannot be liable in an agency capacity for tortious interference by Anthem with Meadowlands's relationships with Anthem subscribers, the Complaint does not state a claim for relief in tort as against Horizon.

Even under the liberal pleading standards that the Court must apply in examining the pleading, it is not possible to discern the “fundament” of a cause of action for tortious

interference with economic advantage from this pleading. Printing Mart-Morristown, 116 N.J. at 746. Instead, at the present time, MHA has merely attempted to shoehorn the facts and circumstances of an alleged breach of contract resulting in frustrated expectation of economic benefit into the elements of a claim for tortious interference. The Court cannot permit a claim to proceed on the basis of such Procrustean logic. See generally id. at 753 ("[T]he rule of tortious interference was not meant to upset the rules governing the contractual relationship itself").[1]

The Complaint is equally lacking in factual averments as to Horizon when it asserts in the Ninth and Tenth Counts a private right of action under New Jersey statutes and regulations. Such claims necessarily require an averment that MHA was providing services to patients as to whom Horizon bears responsibility to cover and pay claims for emergency medical treatment and/or to pay claims in a timely manner. As the factual averments in both Counts here relate solely to out-of-network emergency and other services provided to Anthem subscribers (indeed the Ninth Count explicitly refers to out-of-network emergency services), there is no basis asserted in the Complaint for claims against Horizon predicated on the cited statutes or regulations. Even granting that such regulations do afford a party such as MHA a private right of action, that right does not extend in the circumstances alleged here to a claim for damages against Horizon.[2]

[1] Given the Court's disposition of the claim for tortious interference as to Horizon, it is not necessary to address the argument of Horizon that this claim also runs afoul of the economic loss doctrine.

[2] The Court understands that the claims asserted in the Ninth and Tenth Counts are predicated upon MHA's claim that Meadowlands was providing out-of-network services to Anthem subscribers. It does not interpret the pleading to allege entitlement to relief or further relief under any of the statutes or regulations cited in the Ninth and Tenth Counts in relation to the claims lodged in the alternative for breach of the "in-network" contract, as the only Counts said to be pleaded in the alternative on this theory are the Second and Third Counts. Thus, the Court does not address any claim that the cited statutes or regulations afford an independent basis for relief, such as for interest, should the Plaintiff establish a breach by Horizon of the Network Provider Agreement. But see infra note 4.

For these reasons, the Court concludes that all the Counts lodged against Horizon, save for the First and Second Counts, fail as a matter of law. That MHA lumps Anthem and Horizon together and seeks damages against both of them in each such Count does not give rise to a right to proceed against Horizon. As presently pleaded, the Complaint does not assert facts that would give rise to causes of action against Horizon sounding in implied contract, quasi contract, tort or violation of statutes and regulations. As contemplated by our Rules of Court, the Court will dismiss the First and Fourth through Tenth Counts as against Horizon, but without prejudice to the Plaintiff's right to re-plead to address the deficiencies noted in this Statement of Reasons.

The Court comes to a different conclusion as to the Counts for breach of contract and breach of the implied covenant of good faith and fair dealing pleaded (albeit in the alternative) in the Second and Third Counts. These Counts explicitly rely on the Network Provider Agreement to which Horizon was a party.[3]

Count Two alleges a claim for breach of contract. To state such a cause of action, a plaintiff must establish "a valid contract, defective performance by the defendant, and resulting damages." Coyle v. Englander's, 199 N.J. Super. 212, 223 (App. Div. 1985).

Contrary to Horizon's assertions, both Counts aver that, pursuant to the Network Provider Agreement, Horizon was obligated to pay for the services rendered by Meadowlands to Anthem subscribers pursuant to the terms of the Network Provider Agreement. Examining the Second Count with the requisite liberality, it alleges that Horizon breached its obligations under the

[3] MHA also appears to allege that it is a third-party beneficiary of the Blue Cross Blue Shield Licensee Agreement as between Horizon and Anthem and, accordingly, that MHA is permitted to enforce it. However, the Complaint does not at this time specifically plead facts permitting a conclusion that Meadowlands was an intended non-party beneficiary entitled to enforce the same.

Network Provider Agreement by failing to pay MHA for services rendered by Meadowlands to Anthem subscribers in accordance with the terms of the Agreement.

The Complaint avers that, under the BlueCard program, Horizon was required to reimburse Meadowlands and thus MHA for services rendered to subscribers of another Blue Cross Blue Shield licensee—here, Anthem—in accordance with the rates agreed under the Network Provider Agreement. The Plaintiff alleges, among other matters, that Horizon failed to pay the claims as required, essentially by failing to employ the correct rate schedule agreed by the parties to the Agreement. MHA also alleges that, through their participation in the BlueCard program, Horizon employed—or enabled Anthem to employ—automatic edits to the charges of Meadowlands that improperly effected downcoding and bundling of such charges and that resulted in underpayment contrary to the terms of the Network Provider Agreement.

Horizon appears to contend there can be no claim for relief against it under the Network Provider Agreement because, in processing claims for Anthem, Horizon merely supplied rate information to Anthem. It thus contends that the allegations of underpayment "have nothing to do with Horizon and do not substantiate a claim for breach of contract against Horizon."

It is true that the Second Count of the Complaint also alleges that Horizon acted as an agent for Anthem in its processing of the claims at issue under the Network Provider Agreement. But Horizon also contends that Anthem is not a party to the Agreement and, as a result, appears to contend that Anthem cannot assert a claim under the contract. The argument advanced by Horizon thus proves too much in that it would effectively vitiate any claim for breach of the Network Provider Agreement.

Inasmuch as the Complaint alleges that Horizon was a party to the Network Provider Agreement and a breach of that Agreement in the disposition of the claims at issue, the Court

concludes it is possible to discern the "fundament" of a cause of action for breach of contract as against Horizon in the Second Count. Printing Mart-Morristown, 116 N.J. at 746. The Complaint, examined under the liberal standard of Printing Mart-Morristown, alleges a contract binding upon Horizon, breach of the same by Horizon or for which it would be responsible as the obligor, and resulting damages.[4]

The Third Count alleges a breach of the implied covenant of good faith and fair dealing contained in the Network Provider Agreement to which Horizon was party. "[E]very contract in New Jersey contains an implied covenant of good faith and fair dealing." Sons of Thunder v. Borden, Inc., 148 N.J. 396, 420 (1997) (citations omitted). That is, the parties to a contract must not do '"anything which will have the effect of destroying or injuring the right of the other party to receive' the benefits of the contract." Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping Ctr. Assocs., 182 N.J. 210, 224–25 (2005) (quoting Palisades Properties, Inc. v. Brunetti, 44 N.J. 117, 130 (1965)).

Furthermore, proof of "bad motive or intention" is "vital" to a claim for breach of the covenant of good faith and fair dealing. Id. at 225. The party claiming a breach of the covenant "must provide evidence sufficient to support a conclusion that the party alleged to have acted in bad faith has engaged in some conduct that denied the benefit of the bargain originally intended by the parties." Ibid. (internal citation omitted). In this regard, "[s]ubterfuges and evasions" in the performance of a contract violate the covenant "even though the actor believes his conduct to

[4] The Court notes the argument advanced by MHA that the Network Provider Agreement incorporates the requirements of statutes and regulations referred to as the Prompt Pay Laws and thus obligates Horizon to pay under the contract interest on claims not addressed in a timely manner at the rate established in the regulations. The Court makes no determination at this time as to whether the Network Provider Agreement incorporates such provisions. However, its dismissal as to Horizon of the Ninth and Tenth Counts is not to be taken as a rejection of MHA's position.

be justified." Ibid. (internal citation omitted). However, "an allegation of bad faith or unfair dealing should not be permitted to be advanced in the abstract and absent an improper motive." Wade v. Kessler Inst., 172 N.J. 327, 341 (2002).

Horizon contends the allegations of breach of this covenant merely restate the claim for underpayment and breach of the Network Provider Agreement. It asserts there are no facts pleaded that would establish a bad-faith exercise by Horizon of its discretionary authority under the Network Provider Agreement.

Contrary to Horizon's assertions, the pleading alleges actions by Horizon, Anthem and other Blue Cross Blue Shield licensees in implementing the BlueCard Program that had the effect of depriving Meadowlands and MHA of the benefits of the Network Provider Agreement. It alleges that Horizon and Anthem, among others, created a means of automatic "downcoding" or "bundling" of claims that had the effect of improperly reducing payments to providers such as Meadowlands. Once again, applying the liberal standards of Printing Mart-Morristown, it is possible to discern from the facts alleged a cause of action as against Horizon—the obligor under the Network Provider Agreement—of a breach by it of the implied covenant.

Horizon contends that at least 22% of the individual patient claims submitted by MHA are time-barred under the six-year statute of limitations set forth in N.J.S.A. 2A:14-1 governing claims for breach of contract. It contends that such claims were resolved more than six years before the filing of the Complaint. It asserts—correctly—that the equitable "discovery rule" is not ordinarily applicable to breach-of-contract claims.

However, Horizon does not specify at this time that the claims it asserts are time-barred. As the limitations bar is an affirmative defense, it is incumbent upon Horizon to establish the specific claims it asserts are barred. Moreover, it is not possible to determine on a motion to

dismiss the dates of accrual of MHA's causes of action for breach of contract as to the individual open patient claims. The dates are not necessarily apparent on the face of the Complaint.

MHA also alleges in the Complaint that, at least as to certain claims, it pursued internal appeals with Anthem and/or Horizon that resulted in a later date for accrual than the date of initial disposition. In all the circumstances, the Court concludes that, to the extent the motion is grounded in the statute of limitations, it is premature as it is not possible to grant a motion to dismiss on such basis at the pleading stage.[5]

As the Court has dismissed the First and Fourth through Tenth Counts as to Horizon, there is no need at this time to address the preemption issue raised by Horizon. The Court does not understand Horizon to be asserting a defense of preemption as to any claim for breach of the Network Provider Agreement, the only claim as against Horizon that remains at the present time.

IV

For the reasons set forth herein, the Court grants Horizon's motion to dismiss the First and Fourth through Tenth Counts of the Complaint. It dismisses these Counts as to Horizon without prejudice, and affords MHA a right to re-plead as of right within thirty (30) days of the posting of the Court's Order or at a later time with leave of the Court. It denies the motion as to the Second and Third Counts. Horizon shall file an Answer to the Second and Third Counts only within twenty (20) days of posting of the Court's Order and shall answer or otherwise move as to any Amended Complaint in accordance with the Rules of Court. An Order accompanies this Statement of Reasons.

[5] As the Court has determined to dismiss the Tenth Count as to Horizon on other grounds, it is not necessary to address the separate argument that many of the claims for late payment are time-barred.