

IN THE UNITED STATES DISTRICT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

MEMORIAL HERMANN HOSPITAL  
SYSTEM,

Plaintiff,

vs.

UNITED HEALTHCARE  
INSURANCE COMPANY AND  
UNITED HEALTHCARE OF TEXAS,  
INC.,

Defendants.

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Civil Action No. 4:11-cv-03545

**PLAINTIFF’S FIRST AMENDED COMPLAINT**

COMES NOW, MEMORIAL HERMANN HOSPITAL SYSTEM (“Plaintiff” or “Memorial Hermann”), pursuant to Memorandum and Order of this Court and without waiving anything contained in its Original Petition, files this its First Amended Complaint complaining of UNITED HEALTHCARE INSURANCE COMPANY and UNITED HEALTHCARE OF TEXAS, INC. (collectively referred to as “Defendants” or “UHC”), and for cause of action would show the following:

**Parties**

1. Plaintiff, Memorial Hermann Hospital System, is a non-profit corporation and maintaining its regular offices and place of business in Houston, Harris County, Texas.
2. Defendant, United Healthcare Insurance Company is believed to be an insurance company doing business in the state of Texas. A copy of Plaintiff’s First Amended Complaint is being provided to counsel of record.

3. Defendant United Healthcare of Texas, Inc. is a corporation doing business in the state of Texas. A copy of Plaintiff's First Amended Complaint is being provided to counsel of record.

**Agency**

4. Any time it is alleged in this pleading that Defendants UHC did an act or failed to do any act or thing, it is meant that its authorized, apparent or ostensible agents, employees or representatives did such act or failed to do such act or thing, thereby making Defendants UHC vicariously liable.

**Conditions Precedent**

5. UHC has received written notice of these claims in accordance with the Texas Insurance Code, Texas Business and Commerce Code, and as otherwise required by any applicable law. All attempts to resolve this dispute administratively have been exhausted and/or are futile.

**Factual Background**

6. On September 1, 2006, Memorial Hermann entered into a Facility Participation Agreement ("Agreement") with UHC to provide health care services to UHC's members through a health maintenance organization (HMO) and preferred provider organization (PPO). Pursuant to the Agreement and the provisions of the Texas Insurance Code §843.347, §843.348, §1301.133, §1301.135, §1274.001, and 28 TAC § 19.1724, an HMO and/or PPO may not deny, waive or disclaim a health care provider's claim once the managed care entity has verified a member's coverage and eligibility and authorized the services, provided the services were rendered within thirty days from the date the verification and authorization were obtained.

7. Memorial Hermann timely submitted its clean claims and timely appealed pursuant to the Agreement. UHC denied Plaintiff's claims despite its previous verifications and authorizations.

8. Pursuant to the Agreement and by law, Memorial Hermann expected to be paid promptly and fairly for the hospitalization, care, and treatment provided to UHC's HMO/PPO members. Memorial Hermann contracted to accept lower negotiated rates in lieu of its full billed charges provided that the payments were received promptly after submission of Memorial Hermann's claims, and no later than thirty days by law.

9. UHC failed to timely pay the contractual amount due under the Agreement on HMO/PPO members' claims which were verified and authorized. Due to the breaches, delays, and stall tactics undertaken by UHC, the contractual discounts for these claims are no longer available, and UHC is liable for the full billed charges and other statutory penalties.

10. Exhibit "A" previously provided to Defendant is a spreadsheet of accounts regarding UHC's HMO/PPO members who were provided care and treatment by Memorial Hermann and the accounts remain unpaid.

11. Memorial Hermann rendered the medically necessary services to UHC's HMO/PPO members, the same being the reasonable and customary charges for like items and services in Harris County, Texas. Memorial Hermann's damages are at least \$1,110,221.03, with interest thereon at the highest legal rate.

#### **Breach of Contract**

12. Memorial Hermann realleges the paragraphs above and incorporates the same herein by reference.

13. UHC's conduct constitutes a breach of the Agreement. The HMO/PPO members which received the necessary care and treatment were covered under the Agreement. UHC agreed and promised to timely pay benefits for the medical treatment Memorial Hermann provided to such members. However, UHC denied some of the claims or failed to pay the contract rate timely or at the agreed upon discounted rate, thereby breaching the Agreement. UHC's breach is the direct, proximate, and producing cause of damages to Memorial Hermann in an amount of at least \$1,110,221.03.

14. Memorial Hermann will show that all conditions precedent have been fully performed by Memorial Hermann for recovery of these contractual amounts due under the Agreement or have been waived. As a result of UHC's breach, it has waived any entitlement to the contractual discount for the services provided. All medical treatment rendered to the patients reflected on Exhibit "A" were reasonable and necessary for their care and treatment. The charges for said care and treatment were reasonable charges in Houston, Texas. Memorial Hermann sues UHC for its unilateral breach of the Agreement of at least \$1,110,221.03, including interest thereon at the highest legal rate.

15. Memorial Hermann further sues UHC for statutory violations under the provisions of Article 3.70-3C, §843.342, and §1301.137 of the Texas Insurance Code. Within 45 days of their receipt of MHHS's claims, or 30 days for electronically billed claims, UHC failed and refused to pay Memorial Hermann's claims in accordance with the Agreement. Accordingly, UHC is liable to pay the contracted rate plus 100% of the difference between the billed charges and the contracted rate, and 18% interest pursuant to Art. 3.70-3C, §843.342, and §1301.137 of the Texas Insurance Code. As a result of UHC's breach of the Agreement and violations of the Texas Insurance Code

provisions above, Memorial Hermann has sustained actual damages in the total amount exceeding the minimal jurisdictional limits required by law.

16. Finally, Memorial Hermann will show that it was necessary for it to retain the services of Sullins, Johnston, Rohrbach, & Magers, a law firm with attorneys licensed to practice law in the State of Texas, to prepare and prosecute this cause of action. Memorial Hermann will further show that it has agreed to pay them a reasonable fee for their services rendered, which in the preparation and trial of this action will be at least the sum of 25% of the total recovery, for which amount Memorial Hermann sues UHC pursuant to Article 38.001, Tex. Civ. Prac. and Rem. Code and Article 3.70-3C, §843.343, and § 1301.137 of the Texas Insurance Code. Memorial Hermann would also show that its reasonable attorney's fees would be an increased to 40% of total recovery through all levels of appeal.

#### **Insurance Code Violations**

17. Memorial Hermann re-alleges the foregoing paragraphs and incorporates the same herein by reference as if fully set forth verbatim.

18. Plaintiff Memorial Hermann brings this action as it has been injured by UHC and their agents' acts done in violation of Texas Insurance Code § 843.347, § 1301.133, and § 1274.001; 28 TAC §19.1724; Texas Insurance Code §541.051; §541.052, and §541.056; and Tex. Business and Commerce Code, §17.46, titled "Deceptive Trade Practices Unlawful" (or, as applicable, recodification by amendment) which the Texas Insurance Code adopts and includes as violations under the Texas Insurance Code.

19. Plaintiff Memorial Hermann's causes of action arising out of the following violations of the Texas Insurance Code:

A. Texas Insurance Code §843.347; §1301.133, and §1274.001; and 28 TAC §19.1724, by failing to pay claims where UHC verified and preauthorized its HMO/PPO members' eligibility and coverage, and the services rendered within 30 days.

B. Texas Insurance Code, Sec. 541.051 as follows:

- (1) make, issue, or circulate or cause to be made, issued or circulated, an estimate, illustration, circular or statement misrepresenting with respect to a policy issued or to be issued the terms of the policy, benefits or advantages promised by the policy;

C. Texas Insurance Code, Sec. 541.052 as follows:

- (a) make, publish, disseminate, circulate, or place before the public or directly or indirectly cause to be made, published, disseminated, circulated, or placed before the public an advertisement, announcement, or statement containing an untrue, deceptive, or misleading assertion, representation, or statement regarding the business of insurance or a person in the conduct of the person's insurance business;

D. Texas Insurance Code, Sec. 541.056 as follows:

- (A) knowingly permit the making of...an agreement regarding the contract, other than as plainly expressed in the issued contract...

E. The following practices defined by Tex. Business and Commerce Code, § 17.46 as unlawful and the entitlement to relief for which is set forth in Chapter 542 *et seq.*, Tex. Insurance Code:

- (1) "causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;" § 17.46(b)(2)
- (2) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not; § 17.46(5).
- (3) representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another; § 17.46(b)(7).

- (4) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law; § 17.46(b)(12).

20. Memorial Hermann will show that as the unlawful conduct of UHC was committed “knowingly,” Memorial Hermann is entitled to the treble damage remedy provided by the Texas Insurance Code, plus reasonable attorney's fees and costs of suit, all for which amount it hereby seeks relief.

21. Memorial Hermann will show that it was necessary for it to retain the services of Sullins, Johnston, Rohrbach, & Magers, a law firm with attorneys licensed to practice law in the State of Texas, to prepare and prosecute this cause of action. Plaintiff Memorial Hermann will further show that it has agreed to pay them a reasonable fee for their services rendered, which in the preparation and trial of this action will be at least the sum of 25% of the total recovery, for which amount Plaintiff sues UHC pursuant to § 541.152 of the Texas Insurance Code. Plaintiff would also show that its reasonable attorney's fees would be increased to 40% of total recovery through all levels of appeal.

#### **Negligence and Negligent Misrepresentation**

22. Memorial Hermann realleges all paragraphs above and incorporates the same herein by reference as if fully set forth verbatim.

23. Memorial Hermann will show that it is a business custom in the health care and insurance industries for health care providers to call insurance companies or their agents to verify/preauthorize insurance coverage, eligibility, and benefit levels for patients being admitted and treated. Insurance companies and their agents owe duties to health care providers to reasonably and

adequately investigate the existence of insurance coverage and benefits, and to convey accurate information to the health care provider.

24. Health care providers are without the knowledge or means to gain such knowledge concerning insurance coverage and benefits, and must therefore rely upon the representations of insurance companies or their agents in determining the method and means of being reimbursed for the medical services and supplies, room and board, and ancillary charges being extended to the patient/insured. Once insurance coverage is “verified” and “authorized” by an HMO/PPO, the payor cannot disclaim liability or deny the claim pursuant to the provisions of Texas Insurance Code § 843.347, § 1274.001, §1301.11, and 28 TAC § 19.1724. A healthcare provider must be able to rely upon the insurer’s conveyance of accurate, complete, and current eligibility status of its insureds, the benefit levels available to cover the patients/insureds, and the authorization for services.

25. UHC made specific representations to Memorial Hermann in response to Memorial Hermann’s specific inquiries on eligibility, coverage, and benefit levels available to cover the hospitalizations of the patients identified on Exhibit A. Memorial Hermann informed Defendant UHC it was obtaining this information with respect to treating these patient at its facilities. Memorial Hermann relied on the representations provided by UHC. It was foreseeable that Memorial Hermann would rely upon the representations and verifications of UHC. Memorial Hermann did justifiably and detrimentally rely on UHC’s verifications and representations concerning eligibility, coverage, and benefit levels, and had the reasonable expectation of being paid for the valuable services and supplies, room and board, and ancillary charges extended to UHC’s HMO/PPO members in good faith.



26. UHC breached duties owed to Memorial Hermann as set forth above. UHC failed to exercise reasonable care and competence in conveying true and accurate information concerning eligibility, benefits, and coverage for these patients, failing to honor their verification and authorization of services under the statutes cited above, and paying the Plaintiff's claims as required by the Texas Insurance Code and at common law.

27. Plaintiff Memorial Hermann will show that it has been damaged as a result of Defendant UHC's negligence and negligent misrepresentations. As a proximate cause of said misrepresentations and misauthorizations, Plaintiff Memorial Hermann has been damaged in an amount of at least \$1,110,221.03, including interest thereon at the highest legal rate.

#### **Promissory Estoppel**

28. Alternatively, Memorial Hermann pleads for the recovery of additional reimbursement under the doctrine of promissory estoppel. UHC made a promise to Memorial Hermann to pay its contracted amount pursuant to the Agreement for the medical care and treatment provided to its members. Based upon UHC's promise to Memorial Hermann, it was foreseeable by UHC that Memorial Hermann would rely on the promise to receive its contracted amount of reimbursement, and that Memorial Hermann substantially relied on the promise of its contracted reimbursement to its detriment.

#### **Quantum Meruit**

29. Alternatively, Memorial Hermann pleads for recovery under the doctrine of quantum meruit. Exhibit A is a list wherein Memorial Hermann furnished valuable medical services and treatment to members of UHC which its members accepted, and that the medical services and treatment were furnished under circumstances that reasonably notified UHC that Memorial Hermann

expected to be paid its usual and customary, fair and reasonable amount of at least the contracted amount.

**Federal Claim Under 29 U.S.C. § 1132(a)(1)(B)**

30. Memorial Hermann realleges all paragraphs above and incorporates the same herein by reference as if fully set forth herein verbatim.

31. UHC has alleged that employee welfare benefit plans, as that term is defined in 29 U.S.C. § 1002(1), has been provided and/or administered by UHC. The provisions of the Employee Retirement Income Security Act, 29 U.S.C. § 1001 *et seq.* (hereinafter referred to as “ERISA”), control claims for benefits made by Memorial Hermann, as assignee of certain patients, plan participants or beneficiaries identified on Exhibit “A” of the alleged ERISA plans. Accordingly, and without waiving the foregoing, Memorial Hermann brings this cause of action pursuant to 29 U.S.C. § 1132(a)(1)(B) to recover benefits due to them pursuant to the terms of the alleged ERISA plans administered and provided by UHC for the care and treatment Memorial Hermann provided to the patients identified on Exhibit “A.”

32. Further, Memorial Hermann believes that the care and treatment of certain patients identified on Exhibit “A” were payable as covered charges under the terms and conditions of the applicable ERISA plans administered and provided by UHC as part of the ERISA-type benefits offered to the patients. UHC breached their fiduciary duties under the ERISA plans by not strictly adhering to the complaint and internal and external appeal procedures as required in the ERISA plans. UHC also failed to perform the following:

- (a) failed to notify Memorial Hermann of the benefit determination as required under 29 C.F.R. § 2560.503-1(g);

- (b) failed to establish a procedure where Memorial Hermann can appeal the adverse decision and receive a full and fair review of each claim and the adverse decision under 29 C.F.R. § 2560.503-1(h);
- (c) failed to notify Memorial Hermann within thirty days of the determination made by each ERISA plan as required under 29 C.F.R. § 2560-503-1(i)(2);
- (d) did not provide the specific reason or reasons for the denials;
- (e) did not reference the specific plan provisions relied upon regarding the denials;
- (f) did not state that Memorial Hermann is allowed to have, free of charge, all documents, records and other information relevant to Memorial Hermann's claim for benefits;
- (g) did not provide a statement describing any voluntary appeals procedure available, and a description of all required information to be given in connection with that procedure;
- (h) did not provide the specific rule, guideline or protocol relied upon in making the decision to deny Memorial Hermann's claims;
- (i) did not provide an explanation of the basis for the medical judgment or statement relied upon in the denial as required under 29 C.F.R. § 2560.503-1(j); and
- (j) failed to produce the administrative record of the claims made the basis of this suit when demand was made upon them.

33. As a result, UHC failed to provide a “full and fair review under ERISA, failed to provide reasonable claims procedures, and failed to make necessary disclosures to the patients and Memorial Hermann concerning the claims at issue in this suit. Because UHC, acting as the third party administrator and/or fiduciary of the ERISA plans, failed to follow the above referenced regulations, Memorial Hermann is deemed to have exhausted all internal review and the administrative remedies as required by the ERISA plans pursuant to 29 C.F.R. § 2560.503-1(1). As a proximate and/or direct result of UHC’s unlawful acts, Memorial Hermann has been damaged in an amount of at least \$1,110,221.03.

34. Plaintiff Memorial Hermann specifically reserves the right to amend these pleadings pursuant to pre-trial discovery or upon order of the Court.

**Prayer**

WHEREFORE, PREMISES CONSIDERED, Plaintiff Memorial Hermann Hospital System requests that Defendants United Healthcare Insurance Company and United Healthcare of Texas, Inc. be cited to appear and answer, and that on final trial, Plaintiff have judgment against Defendants jointly and severally, for the following:

- (a) Memorial Hermann’s actual damages of at least \$1,110,221.03;
- (b) Pre-judgment interest on all damages at the highest legal rate;
- (c) Treble damages as authorized by the Texas Business and Commerce Code;
- (d) 18% per annum and punitive damages in the highest amount allowed by law;
- (e) Reasonable attorney’s fees through trial and all levels of appeal;
- (f) All costs of Court;
- (g) Post judgment interest at the highest legal rate; and

- (h) Such other and further relief, general or special, legal or equitable, to which Plaintiff is justly entitled.

Respectfully submitted,

By: *Lynne Sassi*  
MIKE JOHNSTON, TBA #10840500  
LYNNE SASSI, TBA #24041868

ATTORNEYS FOR PLAINTIFF,  
MEMORIAL HERMANN HOSPITAL SYSTEM

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 25 day of January, 2012, a true and correct copy of the attached Plaintiff's First Amended Complaint was electronically transmitted mailed to all counsel of record.

*Lynne Sassi*  
LYNNE SASSI