

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

TEXAS ORAL AND FACIAL SURGERY, PA)
PLAINTIFF)
)
v.)
)
UNITED HEALTHCARE DENTAL, INC. aka)
NATIONAL PACIFIC DENTAL, INC. and its)
affiliates, and SHELL OIL COMPANY)
DEFENDANTS)

Case No. 4:18-cv-944

PLAINTIFF’S FOURTH AMENDED PETITION

Plaintiff, Texas Oral and Facial Surgery, PA (“TXOS”), files this fourth Amended Petition against United Healthcare Dental, Inc. (“UHC”), and Shell Oil Company (collectively “Defendants”), and would respectfully show unto the court as follows:

**I.
DISCOVERY**

Discovery is being conducted under Level 2 of Texas Rule of Civil Procedure 190.

**II.
PARTIES AND SERVICE**

United Healthcare Dental, Inc. aka National Pacific Dental, Inc. dba “United Health Care”, is a Texas corporation which has appeared.

Shell Oil Company is a Texas Corporation located in Houston, Texas which has appeared.

TXOFS is a Texas entity. Plaintiff resides in Harris County.

**III.
JURISDICTION & VENUE**

The State Court has jurisdiction over this matter as the amount in controversy exceeds the minimum jurisdictional limits of the court. Plaintiff seeks monetary relief of \$100,000 or less and non-monetary relief. The federal court does not have jurisdiction.

Venue is proper in state court in Harris County, Texas pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002(a) because Harris County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred, where Plaintiff resides and where at least one defendant resides.

IV. FACTUAL BACKGROUND

Texas Oral and Facial Surgery, PA (“TXOS”) provides surgical solutions to dental patients in Katy, Texas.

Defendant Shell Oil Company uses Co-Defendant United Healthcare to provide their employees with health insurance. This suit focuses on the dental insurance provided by United Healthcare to Shell Oil employees.

Shell Oil Company represents to its employees and to dental providers like Plaintiff that any cutting procedure done in a dental office setting is 100% covered by their dental insurance through United healthcare. Defendant Shell Oil represents this in writing.

Despite the fact that Plaintiff called to have Shell employees preapproved through United Healthcare, numerous employees undergoing oral surgery have been denied the 100% coverage claimed by United Healthcare after the treatment was provided. Shell Oil Company has negligently misrepresented its coverage to Plaintiff. United Healthcare has committed fraud and breached its contract to provide 100% coverage to Shell employees under this scenario.

TXOS, a third party beneficiary, relied on Defendants representations has suffered the consequences by way of pecuniary loss through the actions of Defendants. Plaintiff has wasted countless hours dealing with UHC’s accounting incompetence and lost thousands of dollars based on UHC’s billing errors

Plaintiff has provided detailed information regarding the following account which are the accounts that where Defendants have committed negligent misrepresentations, fraud, and breach

of contract committed by the Defendants:

1) **Acct # 857403391**: DOS: 12/21/15, Surgery totaling: \$2910.00, Insurance paid: \$2860.00

UHC paid 100% after the deductible, then on January 15, 2016, UHC sent a letter stating they over paid and asking for \$460.00 back. Typically, United Health wrongly says submitted charges were \$3,200.00. Plaintiff called UHC multiple times and no one from UHC can explain it. UCH then deducted \$460.00 from another patient's account for this.

2) **Acct# 978683548**, DOS: 3/11/2016, Surgery totaling: \$2945.00, Insurance paid: \$2345.00.

UHC owes \$550.00 for patient's anesthesia. Plus, UHC deducted \$460.00 from his payment to Pay above account.

3) **Acct #: 921615495**, DOS: 9/4/2015, Surgery totaling: \$3180.00, Insurance paid: \$1995.00+

675.00. UHC refused to pay for anesthesia, and forced Plaintiff to appeal. After dragging Plaintiff through the appeal process, UHC only paid \$660.00. UHC finally paid this on 5/24/2016 after forcing employee to go to Shell's Human Resource department involved and costing Plaintiff multiple hours and time dealing with the wrongful handling of the claim.

4) **Acct #: 804429384**, DOS: 2/5/2016, Surgery totaling: \$2190.00, Insurance paid: \$1590.00.

Insurance has not paid any anesthesia for this member.

5) **Acct#: 856875502**, DOS: 06/10/2016, Surgery totaling: \$2940.00, insurance paid: \$1030.00,

\$1400.00, \$690.00. UHC is now demanding a refund of \$740.00, saying they paid the claim in error. Plaintiff called UHC numerous times to have someone explain where this is coming from, and no one from UHC could explain it. Plaintiff repeatedly told a supervisor would call, and no one ever does. UHC then deducted money from another member to pay off this \$740.00. UHC demanded \$2380.00 total reimbursement of \$3120.00 The claim for services was only \$2940.

6) **Acct #: 938133712**, DOS: 4/5/2016, Surgery totaling: \$1500.00, Insurance paid: zero.

Plaintiff had several conversations UHC regarding this member surgery before the surgery,

provided the codes for the procedures and were assured by UHC that the procedure would be covered at 100%. The employee called and spoke with UHC reps and was told the same thing. Plaintiff, the employee and the insurance company had 3 way phone conversations and were assured that it was covered. Then, after the procedure, the claim was denied. Plaintiff and the employee appealed through all the appeal process and are now being told that there are no more appeals and the claim will not be paid.

After the employee was forced to go to Shell's HR department, UHC reps are suddenly calling apologizing claiming the fee would be paid in writing. Then, on 9/10/16, UHC claimed they had denied the claim.

- 7) **Acct #: 936489653**, DOS: 6/13/2016, Surgery totaling: \$2940.00, Insurance paid: \$1080.00 and \$1030.00 UHC refused to pay for anesthesia for this employee/member.
- 8) **Acct #: 9635558137**, DOS: 12/16/2015, surgery totaling: \$2650.00, Insurance paid: \$1175.00. UHC refused to pay for anesthesia.
- 9) **Acct #: 808318152**, DOS: 6/13/2016, Surgery totaling: \$1825.00, insurance has paid: \$1225.00 and \$320.00. The anesthesia time billed for this service was 30 minutes, 2 increments Of 15 minutes each.
- 10) *Acct #: 924074636*, DOS: 2/24/2016, Surgery totaling: \$1390.00, Insurance paid: \$1300.00 UHC then requested \$230.00 be refunded claiming UHC over paid. UHC then deducted the funds from another patient's account.
- 11) **Acct # 910683145**, DOS: 4/28/2016, Surgery totaling: \$1435.00, Insurance paid: \$835.00. They still owe \$230.00 for anesthesia, plus they took another \$230.00 from her payment To apply to another member.
- 12) **Acct # 907985421**, DOS: 6/8/2016, Surgery totaling: \$3210.00, Insurance paid: \$2330.00

UHC applied \$740.00 to another member.¹

- 13) **Account #824620756** DOS 12/30/16 amount owed \$90
- 14) **Account #819907795** DOS 3/25/15 amount owed \$610
- 15) **Account #906911723** DOS 7/29/16 amount owed \$90
- 16) **Account #978683548** DOS 3/11/16 amount owed \$460
- 17) **Account #804429384** DOS 2/05/16 amount owed \$460
- 18) **Account #951365464** DOS 12/19/16 amount owed \$90
- 19) **Claim #51242511056** DOS 6/30/15 amount owed \$90
- 20) **Claim #5125828214** DOS 6/30/15 amount owed \$90
- 21) **Account #906911723** DOS 7/29/16 amount owed \$90

Detailed information about these accounts have been provided to Defendants.

V. DAMAGES

Plaintiff seeks all actual damages plus consequential damages for Defendant's wrongful conduct as well as attorney's fees. Plaintiff seeks monetary relief of \$100,000 or less and non-monetary relief.

VI CAUSES OF ACTION

1. NEGLIGENT MISREPRESENTATION

Defendant Shell Oil Company, distributed dental insurance literature, negligently misrepresented to Plaintiff that any cutting procedure done in a dentist's office would be 100% covered. These cutting procedures would be pre-approved and sometimes paid for by Defendants. After the procedure, Defendants would then ask for a refund of the payment, or never pay at all.

¹ Defendant's counsel has been given these and other account details and outside the public confines of this pleading due to HIPPA concerns.

The Supreme Court of Texas, along with several other courts of appeal in Texas, have adopted the definition of negligent misrepresentation from the Restatement Second of Torts. The elements of a cause of action for the breach of this duty are: (1) the representation is made by a defendant in the course of his business, or in a transaction in which he has a pecuniary interest; (2) the defendant supplies “false information” for the guidance of others in their business; (3) the defendant did not exercise reasonable care or competence in obtaining or communicating the information; and (4) the plaintiff suffers pecuniary loss by justifiably relying on the representation. *Fed. Land Bank Ass'n of Tyler v. Sloane*, 825 S.W.2d 439, 442 (Tex. 1991).

Defendant Shell Oil Company represented in the course of business to its employees and in turn to Plaintiff, who both have a pecuniary interest in their own pocketbooks, that any cutting procedures in a dental office setting were 100% covered. Defendant Shell Oil Company provided false information to Plaintiff by way of the literature that Defendant distributed. Shell Oil Company did not exercise reasonable care or competence communicating with Plaintiff. Plaintiff has suffered pecuniary loss as a result of the misrepresentation made by Shell Oil Company.

2. FRAUD

Defendant United Healthcare committed fraud on the Plaintiff by refusing to make good on their representation to pay for 100% of any cutting procedure done in a dentist’s office. The cutting procedures were pre-approved and sometimes paid for by Defendants. After the procedure, Defendants would then ask for a refund of the payment, or never pay at all.

The elements of fraud are: (1) a material misrepresentation was made; (2) the representation was false; (3) when the representation was made, the speaker knew it was false or made the statement recklessly without any knowledge of the truth; (4) the speaker made the representation with the intent that the other party should act on it; (5) the party acted in reliance

on the representation; and (6) the party thereby suffered injury. *In Interest of C. M. V.*, 479 S.W.3d 352, 361 (Tex. App.—El Paso 2015, no pet.)

Defendant United Healthcare committed fraud through their material misrepresentation of their dental coverage to Plaintiff. The representation that any cutting procedure done in a dental office setting would be 100% covered was a false representation made by the Defendants. Defendants knew the statement was false when they made the representation. The representation was made with the intent that Plaintiff would act on it by scheduling with the surgeries. Plaintiff acted in reliance on the representation by proceeding with the cutting procedures. Plaintiff has suffered pecuniary injury by way of non-payment.

3. BREACH OF CONTRACT

Defendant United Healthcare breached its contract with Plaintiff when it refused to cover the cutting procedures it claimed to cover. When Defendants would pre-approve a cutting procedure, a valid binding contract was formed between the insurer, Defendant United Healthcare and the Plaintiff, medical provider TXOS. Texas has long recognized this principal. See *Hermann Hospital v. Nat'l Standards, Ins.*, 776 S.W.2d 249, 254 (Tex. App. – Houston [1st Dist.] 1989, no writ)(holding that providers can sue and recover damages proximately caused by insurance companies misrepresentations about health coverage and benefits available to providers for their treatment of patients).

The elements of a breach of contract claim are (1) a valid contract; (2) the plaintiff performed or tendered performance; (3) the defendant breached the contract; and (4) the plaintiff was damaged as a result of the breach. *McLaughlin, Inc. v. Northstar Drilling Techs., Inc.*, 138 S.W.3d 24, 27 (Tex.App.—San Antonio 2004, no pet.).

Defendants formed a valid contract with Plaintiff when they pre-approved the cutting

procedures at 100% coverage. Plaintiff performed the cutting procedures as scheduled. Defendants breached the contract by either not paying the agreed amount or by requesting a refund. Plaintiff has been damaged monetarily by the breach by a lack of payment for the performed procedures.

**VII.
INTEREST**

Plaintiff seeks all indebtedness herein described and sued upon owing by Defendants to Plaintiff together with prejudgment and postjudgment interest at maximum rate allowed by law.

**VIII.
ATTORNEY'S FEES**

1. Plaintiff has retained the undersigned lawyers to prosecute this suit and have agreed to pay a reasonable fee for the legal services performed.

2. Plaintiff is entitled to recover reasonable attorney's fees for all legal services performed in the trial court and for any and all appeals for the actions referencing attorney's fees above.

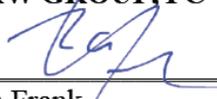
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff asks for judgment against Defendants, as follows:

- (a) actual damages, compensatory and statutory damages;
- (b) plus, punitive damages;
- (c) plus, pre-judgment interest and post-judgment interest at the maximum legal rate;
- (d) plus, reasonable attorney's fees in the trial court and all appellate courts;
- (e) plus all costs of court in the trial court and all appellate courts; and
- (f) all other relief which Plaintiff may show itself to be justly entitled.

Respectfully submitted,

F&L LAW GROUP, PC



Ron Frank

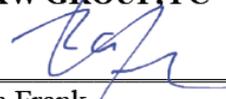
Texas Bar No. 07370770
Jeffrey Boyd Lucas
Texas Bar No. 00789461
1251 Pin Oak Road, Suite 13
Katy, Texas 77494
(281) 542-3575
(713) 493-0175 – Fax
ron@lawgrouptexas.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that the above has been served on all counsel of record on April 25, 2018 in accordance with the Texas Rules of Civil Procedure.

F&L LAW GROUP, PC



Ron Frank