

**IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT
ORANGE COUNTY, FLORIDA**

FLORIDA INFECTIOUS DISEASE
GROUP, P.A., a Florida personal
service corporation,

Plaintiff,

vs.

CASE NO.: 03-CA-2424

UNITED HEALTHCARE OF FLORIDA,
INC., a Florida corporation,

Div.: 39

Defendants.

_____ /

AMENDED COMPLAINT

COMES NOW the Plaintiff, Florida Infectious Disease Group, P.A., by and through its undersigned attorneys, and files this Amended Complaint, referring back in time to the Complaint (with attached exhibits) it originally filed, and sues Defendant, United Healthcare of Florida, Inc., alleging:

PARTIES, JURISDICTION AND VENUE

1. This is an action, including counts for breach of contract, equitable estoppel, promissory estoppel, the Florida RICO Act, breach of the implied duty of good faith and fair dealing, unjust enrichment, violations of Florida's Prompt Pay Statute, various statutory causes of action, for a declaratory judgment and for injunctive relief, for damages in excess of \$15,000.00, exclusive of attorney's fees and costs.

2. Plaintiff Florida Infectious Disease Group, P.A. ("FIDG" herein) is a Florida professional service corporation operating a medical practice located at 1012 Lucerne Terrace, Orlando, Orange County, Florida 32806. The physicians of FIDG specialize in treating patients with infectious diseases.

3. United Healthcare of Florida, Inc. ("UHC" herein), is a Florida corporation, with its offices located at 495 North Keller Road, Suite 200, Maitland, Orange County, Florida 32751.

4. The Circuit Court of Orange County, Florida, has jurisdiction pursuant to Section 26.012, Florida Statutes, and Section 48.193, Florida Statutes, in that UHC has operated, conducted, engaged in, or carried on a business or business venture in this State, has an office or agency in this State, and has breached a contract in this State by failing to perform acts required by the contract to be performed here.

5. Venue is proper in Orange County, Florida, in that UHC has an office in Orange County, Florida, conducts business in Orange County, Florida, and this cause of action, in whole or in part, accrued in Orange County, Florida.

6. All conditions precedent to this action have been performed, satisfied or waived.

ALLEGATIONS COMMON TO ALL COUNTS

a. General: The Parties and Their Relationship

7. On or about January 15, 1995, CAC-Ramsey Health Plans, Inc., entered into a contract with Carmelo M. Licitra, M.D., for the provision of services to UHC's patients ("1995 Agreement"), attached hereto as Exhibit "A."

8. CAC-Ramsey Health Plans, Inc., was a health maintenance organization (HMO) licensed by the State of Florida and governed by Chapter 641, Florida Statutes.

9. Exhibit "A" is an HMO contract.

10. Carmelo M. Licitra, M.D. ("Dr. Licitra") is a physician who was employed at all relevant times by FIDG, and its predecessors.

11. CAC-Ramsey Health Plans, Inc., became CAC-United Healthcare Plans of Florida, Inc., effective April 7, 1995.

12. CAC-United Healthcare Plans of Florida, Inc. was a health maintenance organization (HMO) licensed by the State of Florida and governed by Chapter 641, Florida Statutes.

13. On or about January 1, 1996, CAC-United Healthcare Plans of Florida, Inc., entered into a new contract with Licitra and Brooks, P.A., for the provision of services to UHC's patients ("1996 Agreement" herein), attached hereto as Exhibit "B."

14. Exhibit "B" is an HMO contract.

15. Licitra and Brooks, P.A., changed its name effective December 10, 1996 to Florida Infectious Disease Group, P.A. ("FIDG").

16. Effective July 1, 1996, CAC-United Healthcare Plans of Florida, Inc. merged with several other entities into Defendant United Healthcare of Florida, Inc. ("UHC").

17. Defendant United Healthcare of Florida, Inc. ("UHC") is, and was at all times relevant hereto, a health maintenance organization (HMO) licensed by the State of Florida and governed by Chapter 641, Florida Statutes.

18. Exhibit "B" is binding on and is legally enforceable against Defendant UHC.

19. Subsequently, on or about March 1, 1999, UHC amended the 1996 Agreement with Licitra and Brooks, P.A. ("1999 Amendment" herein), attached hereto as Exhibit "C."

20. Exhibits "B" and "C" constitute an HMO contract.

21. On or about December 15, 1999, UHC further amended the 1996 Agreement (attached hereto as Exhibit "D"); at this time, UHC changed the name of the provider from "Licitra and Brooks, P.A.," to "Florida Infectious Disease Group, P.A.," the Plaintiff herein.

22. Exhibits "B," "C" and "D" constitute an HMO contract.

23. At all relevant times hereto, Dr. Licitra was acting for and on behalf of FIDG and its predecessors.

24. Robert Brooks, M.D. ("Dr. Brooks") is a physician who was employed at all relevant times by FIDG, and its predecessors.

25. At all relevant times hereto, Dr. Brooks was acting for and on behalf of FIDG, and its predecessors.

26. Asim A. Janl, M.D. ("Dr. Janl") is a physician who was employed at all relevant times by FIDG.

27. At all relevant times hereto, Dr. Janl was acting for and on behalf of FIDG.

28. FIDG is entitled to all income from medical services delivered by its employees, including Dr. Licitra, Dr. Brooks and Dr. Janl. FIDG, at all relevant times, has been authorized to bill for and collect from all insurance companies, including Defendant UHC, for the services performed by its physicians, including Dr. Licitra, Dr. Brooks and Dr. Janl and its other physicians.

29. FIDG is the real party in interest in enforcing the obligations of Defendant UHC to pay the monies UHC owes as stated in this Complaint.

30. United Healthcare of Florida, Inc. is the successor of CAC-Ramsey Health Plans, Inc. and CAC-United Healthcare Plans of Florida, Inc.

31. All obligations owed by either CAC-Ramsey Health Plans, Inc. or CAC-United Health Care Plans of Florida, Inc. to this Plaintiff are now owed by Defendant UHC.

32. Since 1998, UHC has engaged in a pattern and practice of wrongfully denying for inappropriate reasons claims it receives from FIDG.

33. Since 1998, UHC has also engaged in a pattern and practice of neither paying nor denying certain claims it receives from FIDG.

b. UHC is an HMO governed by Chapter 641, Florida Statutes

34. UHC is a health maintenance organization (HMO), governed by Chapter 641, Florida Statutes.

35. Exhibits "A," "B," "C" and "D" are health maintenance organization contracts or amendments thereto, covered by Chapter 641, Florida Statutes.

c. UHC's Failure to Pay or Deny Claims Within 45 Days

36. All claims referred to herein are alleged to be complete, correct clean claims for services, medicines, equipment or treatments actually provided to UHC members who were FIDG patients.

37. FIDG submitted more than 100 claims to UHC, which UHC did not pay or deny within forty-five (45) days of receipt. By way of example, Exhibit "J" contains a list of some, but not all, of the claims submitted by FIDG which UHC did not pay or deny within forty-five (45) days.

d. UHC's Failure to Pay a Fair or Correct Amount for Certain CPT Codes Billed

38. From March 1, 1999 through the present, CPT code A4305 did not appear on the UHC fee schedule attached to Exhibit "C."

39. From March 1, 1999 through the present, CPT code 36410 did not appear on the UHC fee schedule attached to Exhibit "C."

40. On August 9, 1999, FIDG requested via facsimile correspondence to a provider representative of UHC, Yolanda, that UHC add CPT codes A4305 and 36410 to the fee schedule. Exhibit "G."

41. UHC did not respond to the August 9, 1999 request from FIDG.

42. Additionally, from March 1, 1999, through the present, there were a number of other CPT codes that described the services and medications provided to UHC patients by FIDG which did not appear on the UHC fee schedule attached to Exhibit "C." These include, but are not limited to CPT codes 90780, 90781, A4221, A4222, A4301, J0286, J0690, J1642, J3480, J1745, J3370, J7050, J7051 and S0072.

43. Since March 1, 1999, FIDG has submitted more than 210 claims for payment of CPT code A4305.

44. Since March 1, 1999, FIDG has submitted more than 100 claims for payment of CPT code 36410.

45. Since March 1, 1999, FIDG has submitted a number of other claims for the CPT codes set forth in paragraph 42 above.

46. By way of example, a list of some of the claims for which FIDG provided services and medications to UHC members and patients and for which it billed UHC but for which it did not receive payment for this Count are included as Exhibit "K."

47. UHC failed to pay any amount to FIDG for any of these claims.

e. Failure to Pay FIDG's Charges for Non-Fee Schedule CPT Codes Billed

48. FIDG timely submitted claims for medications dispensed to UHC patients in one week increments, each week.

49. UHC only partially paid these claims, rendering payment of less than the billed charges. FIDG, upon information and belief, also believes that UHC paid it less than the "fee schedule amount" for these claims.

50. When FIDG requested the reason for this, on or about July 26, 2001, UHC claimed it partially paid the claims because the number of units exceeded the maximum frequency per day (Exhibit "F").

51. UHC directed FIDG to resubmit the claims for medications dispensed to UHC patients in daily, not weekly, increments (Exhibit "F") and indicated it would then pay these.

52. Nothing in the 1996 Agreement, Exhibit "B," or the amendments thereto, prescribed the manner in which FIDG was required to bill medication units.

53. FIDG resubmitted the claims, but UHC refused to pay all the claims.

54. By way of example, a list of some of the claims for which FIDG provided services and medications to UHC members and patients and for which it billed UHC but for which it did not receive payment for this allegation are included as Exhibit "L."

f. Wrongfully Denying and Wrongfully Failing to Pay Claims

55. FIDG submitted a number of claims to UHC, which were valid, that UHC wrongfully denied. By way of example, Exhibit "M" contains a list of some, but not all, of the valid claims submitted by FIDG for which UHC denied payment or paid \$0.00.

h. UHC's Falsely Promising to Pay for Certain Medications and Devices at Certain Rates

56. Since at least 1998, FIDG had been treating patients suffering from serious infectious disease processes requiring long-term antibiotic treatments, including UHC patients, by implanting them with a Ready Med (brand) elastomeric ambulatory infusion system (commonly referred to in the medical community as a Ready Med "pump"), a type of intravenous ("IV") therapy.

57. Treating infectious disease patients through use of the Ready Med pump represents safe, cost effective, efficient and medically effective treatment which allows the patient a more active lifestyle and reduces the overall costs of medical care.

58. Ready Med pumps are billed using CPT code A4305.

59. FIDG timely submitted claims for the Ready Med pumps to UHC beginning in approximately 1998.

60. FIDG also billed UHC for venipunctures, also required by UHC patients.

61. Venipuncture procedures are billed using CPT code 36410.

62. FIDG timely submitted claims to UHC for the venipuncture procedures billing for CPT Code 36410.

63. In or about March 1999, an agent of UHC's named Yolanda represented to FIDG that UHC would process and pay FIDG for all of its claims for CPT codes A4305 and 36410 if it would continue to provide the Ready Med pumps and perform the venipunctures on UHC's patients.

64. In early 2000, Susan Anderson of FIDG, spoke with Yolanda of UHC on several different occasions regarding FIDG's unpaid claims. Yolanda advised Ms. Anderson that if FIDG sent in copies of the claims it had previously submitted for the IV therapy claims (the Ready Med pumps and venipunctures), UHC would process these and pay them.

65. On March 2, 2000, Yolanda of UHC telephoned Susan Anderson of FIDG and left a message stating that if Ms. Anderson sent her an example of how FIDG was billing its claims for IV therapy services, "Kathy Marshall (of UHC) will review it and get it to work with the system." Exhibit "H."

66. On March 3, 2000, Susan Anderson responded to the message left by UHC's representative and telefaxed her what she had requested. Exhibit "I."

67. In early 2000, Leah Maben, another agent of UHC, represented to FIDG that UHC would process and pay FIDG for CPT codes A4305 and 36410 if it would continue to provide the Ready Med pumps and perform the venipunctures on UHC's patients.

68. FIDG relied on the statements made by Yolanda and Leah Maben of UHC by continuing to provide Ready Med pumps (CPT code A4305) and venipuncture services (CPT code 36410) to UHC patients.

69. UHC only paid a few of FIDG's claims for CPT code A4305.

70. UHC only paid a few of FIDG's claims for CPT code 36410.

71. UHC failed to pay approximately 210 claims for CPT code A4305.

72. UHC failed to pay approximately 100 claims for CPT code 36410.

73. FIDG suffered detriment by furnishing the Ready Med pumps and venipuncture services without receiving payment, as a result of the representations made by UHC and FIDG's reliance on these representations.

74. UHC's wrongdoings were intentional or, alternatively, negligent.

h. UHC's Averaging Prices of Non-comparable Drugs to Obtain an Artificially Low Price

for Reimbursement for the Drug AmBisome

75. The Average Wholesale Price (AWP) Fee Schedule sets the payment for injectable drugs according to an average of the price of the injectable drug and the price of two (2) comparable drugs.

76. AmBisome, an injectable drug, costs \$550 per unit.

77. There is not another drug comparable to AmBisome.

78. Nonetheless, the United Healthcare AWP Fee Schedule states that UHC only pays \$127.24 per unit for AmBisome.

79. For example, on June 20, 2001, FIDG submitted a claim to UHC for patient LJ (ID No. 9300), for the drug AmBisome which had been administered to him, billing UHC \$1,057.08. UHC paid FIDG only \$41.05 on this claim.

80. On or about June 13, 2000, a UHC employee named Debra, acting on behalf of UHC and with the authority to so act, working in the Care Coordination Department of UHC, spoke with Susan Anderson of FIDG and agreed to reimburse FIDG at a rate for AmBisome that was higher than its cost.

81. Plaintiff FIDG treated UHC members (FIDG patients) who required treatment with AmBisome.

82. Plaintiff ordered AmBisome and treated UHC members with AmBisome.

83. Plaintiff submitted claims and billed Defendant UHC for the AmBisome.

84. Defendant, UHC reimbursed Plaintiff FIDG at unacceptable rates for the AmBisome.

85. UHC failed to ever reimburse FIDG at a higher amount for AmBisome.

86. FIDG relied on the representations made by UHC on or about June 13, 2000.

87. As a result of the representations made by UHC and FIDG's reliance on the representation, FIDG suffered a detriment by dispensing AmBisome to patients without receiving payment from UHC to reimburse FIDG for the cost of the AmBisome distributed to UHC's patients.

i. Other Acts of UHC

88. UHC has consistently and continuously since 1996 falsely claimed to have not received claims that FIDG submitted to it.

89. UHC has consistently and continuously since 1996 promised to research, locate and process claims for payment that it wrongfully denied, but then failed to do so.

90. In addition to the acts alleged above, UHC has also consistently and continuously since 1996:

- a. Failed to adopt and implement standards for the proper investigation of claims;
- b. Misrepresented pertinent facts or contracts;
- c. Failed to acknowledge and act promptly upon communications with respect to claims;
- d. Denied claims without conducting reasonable investigations based upon available information; and
- e. Conducted systematic downcoding with the intent to deny reimbursement otherwise due.

j. Commission of Unfair Claim Settlement Practices by UHC

91. Section 641.3903, Florida Statutes, specifically prohibits health maintenance organizations such as UHC from committing certain types of conduct, and labels these as "unfair methods of competition and unfair or deceptive acts or practices."

92. The acts of UHC as set forth herein specifically violate Sections 641.3903(5)(c)(1), (2), (3), (4) and(9) and constitute "unfair claim settlement practices."

93. UHC has committed these acts with such frequency as to indicate a general business practice.

k. Exhaustion of Remedies

94. On or about June 29, 2001, Lynda Anderson, a Senior Network Account Representative, met with Susan Anderson, the Practice Manager of FIDG, to discuss the claims which UHC had either denied or failed to pay or deny.

95. At the June 29, 2001 meeting, FIDG again delivered to UHC (Lynn Anderson) its unpaid claims with dates of service from 1998 to 2001 ("Disputed Claims" herein). All of the Disputed Claims had previously been timely submitted and were either wrongfully denied by UHC or not processed at all by UHC. All claims wrongfully denied by UHC had been timely resubmitted by FIDG and remained unpaid. Lynn Anderson of UHC signed a receipt for these claims, Exhibit "E."

96. At the June 29, 2001 meeting, Lynda Anderson of UHC agreed that UHC would grant an exception to its regular rules on processing claims to FIDG and would pay all of the Disputed Claims by processing the claims through the UHC system, if FIDG would resubmit the Disputed Claims.

97. At the June 22, 2001 meeting, UHC agreed that it would advise FIDG on how to submit future claims for payment to avoid the problems FIDG encountered in UHC's handling of the Disputed Claims from 1998 to 2001.

98. FIDG had a long established business relationship with UHC and its predecessors going back to at least 1995. FIDG routinely relied upon the promises of UHC and its agents, including Lynn Anderson, in its dealings with UHC.

99. By letter dated July 26, 2001 (attached hereto as Exhibit "F"), Lynda Anderson of UHC advised FIDG that UHC would not pay any of the Disputed Claims with dates of service in 1998 or 1999.

100. By letter dated July 26, 2001, UHC advised FIDG that it would not pay many of the Disputed Claims with dates of service in 2000 or 2001 (Exhibit "F").

101. FIDG has attempted to resolve the Disputed Claims through additional letters to and negotiations with UHC; however, the Disputed Claims remain unpaid.

102. FIDG has exhausted its remedies under the 1996 Agreement, Exhibit "B."

I. FIDG's Entitlement to Attorney's Fees

103. Section 5 of the 1996 Agreement, Exhibit "B," contains the following language:

SECTION 5 Liability of Parties

5.1 Responsibility for Damages. Each party shall be responsible for any and all damages, claims, liabilities or judgments which may arise as a result of its own negligence or intentional wrongdoing. Any costs for damages, claims, liabilities or judgments incurred at any time by one party as a result of the other party's negligence or intentional wrongdoing shall be paid for or reimbursed by the other party.

104. Exhibit "B" was drafted by Defendant UHC and any ambiguities or uncertainties in its language must be interpreted against UHC and in favor of FIDG.

105. Section 641.28, Florida Statutes Annotated (West 2002 Supp.), amended and effective as of July 1, 1996, states:

641.28. Civil Remedy

In any civil action brought to enforce the terms and conditions of a health maintenance organization contract, the prevailing party is entitled to recover reasonable attorney's fees and court costs.

This section shall not be construed to authorize a civil action against the department, its employees, or the Insurance Commissioner or against the Agency for Health Care Administration, its employees, or the director of the agency.

106. Pursuant to Section 5.1 of the 1996 Agreement, costs associated with bringing this claim may be awarded, if UHC's breach was negligent or intentional.

107. As worded, Section 5.1 of the 1996 Agreement, Exhibit "B," also authorizes the awarding of attorney's fees as part of the "costs."

108. Pursuant to Section 641.28, Florida Statutes, attorney's fees and costs may be awarded to the prevailing party in an action to enforce the terms and conditions of a health maintenance organization contract.

109. Additionally, Section 641.3155, Florida Statutes, requires prompt payment by UHC of properly submitted claims, and provides for a penalty for late payments.

110. FIDG retained the undersigned attorneys to pursue its payment claims against UHC and agreed to pay the undersigned attorneys reasonable fees for their services.

COUNT I

ACTION FOR BREACH OF CONTRACT AGAINST UHC

111. This is an action for breach of contract against UHC for damages in excess of \$15,000, exclusive of attorney's fees and costs, pleaded in the alternative to or in addition to the other counts of this complaint.

112. Plaintiff incorporates all allegations in Paragraphs 1 through 107 above.

113. Section 4.1 of the 1996 Agreement, Exhibit "B," requires UHC to pay or deny all claims within forty-five (45) days of receipt of a clean claim.

114. UHC's failure to pay or deny the claims within forty-five (45) days was a breach of Section 4.1 of the 1996 Agreement, Exhibit "B."

115. Section 2.1 of the 1999 Amendment, Exhibit "C," provides that UHC will pay FIDG fifty percent (50%) of the billed charges for any CPT code not identified on the UHC fee schedule attached to it. Exhibit "C" went into effect on March 1, 2003.

116. By failing to pay fifty percent (50%) of the billed charges to FIDG, UHC breached Exhibit "B," as amended, specifically, Section 2.1 of the 1999 Amendment, Exhibit "C."

117. The 1996 Agreement, Exhibit "B," between FIDG and UHC provides that UHC will pay FIDG the lesser of FIDG's charges or "the fee schedule amount." Exhibit "B" took effect on January 1, 1996.

118. However, UHC has never provided FIDG with any "fee schedule" applicable to Exhibit "B."

119. By failing to make payment pursuant to the billed charges or the fee schedule, UHC breached Section 4.1 and the Fee Schedule Appendix of the 1996 Agreement, Exhibit "B."

120. Section 4.1 of the 1996 Agreement, Exhibit "B," as amended by Exhibits "C" and "D," requires UHC to pay FIDG for all health services (as that term is defined in Exhibit "B") rendered to UHC's members (FIDG's patients) within 45 days of the receipt of the claim from FIDG. UHC failed to do this on numerous different occasions from 1996 through the present.

121. Exhibit "B," as amended by Exhibit "C" (the 1999 Amendment), provides that injectable drugs, other than vaccines, will be reimbursed according to the United Healthcare AWP Fee Schedule.

122. By using an arbitrary and artificially low reimbursement fee or by averaging the price of two (2) non-comparable drugs to obtain an artificially low reimbursement fee for AmBisome, UHC breached the 1999 Amendment, Exhibit "C."

123. The acts of UHC set forth in paragraphs 106 through 115 above constitute breaches of Exhibit "B" (as amended by Exhibits "C" and "D").

124. FIDG has been damaged by the breaches set forth herein, by not being paid for services, medications and devices it has provided to UHC's members (FIDG's patients).

125. UHC's breaches were either intentional or, alternatively, negligent.

COUNT II

ACTION FOR EQUITABLE ESTOPPEL AGAINST UHC

126. This is an action for equitable estoppel against UHC, within the jurisdiction of this Court, for damages in excess of \$15,000, exclusive of attorney's fees and costs, pleaded in the alternative to or in addition to the other counts of this complaint.

127. Plaintiff incorporates all allegations in Paragraphs 1 through 51, 53 through 87, and 94 through 101, above.

128. For the purpose of this Count, Plaintiff FIDG alleges in the alternative that there was no applicable contract or contractual provision or that the promises made were outside of and for actions by the parties that were not covered by any existing contract otherwise referred to herein.

129. The representations by Defendant UHC's employees and agents to Plaintiff FIDG were as to material facts.

130. The representations made by UHC were contrary to the condition of affairs later asserted by UHC.

131. Plaintiff FIDG relied on the representations.

132. Plaintiff FIDG suffered detriment by a change in position as a result of the representations and reliance thereon.

133. FIDG continued to treat UHC patients, using the same medications, devices and services, billing UHC for them and not receiving payment from UHC for them.

134. As a result, FIDG suffered damages.

COUNT III

ACTION FOR PROMISSORY ESTOPPEL AGAINST UHC

135. This is an action for promissory estoppel against UHC, within the jurisdiction of this Court, for damages in excess of \$15,000, exclusive of attorney's fees and costs, pleaded in the alternative to or in addition to the other counts of this complaint.

136. Plaintiff incorporates all allegations in Paragraphs 1 through 51, 53 through 87, and 94 through 101, above.

137. For the purposes of this Count, Plaintiff FIDG alleges in the alternative that there was no applicable contract or contractual provision or that the promises made were outside of and for actions by the parties that were not covered by any existing contract otherwise referred to herein.

138. Defendant UHC made misrepresentations of material facts.

139. Defendant UHC should reasonably have expected to induce action or forbearance on the part of Plaintiff FIDG.

140. Defendant UHC's misrepresentations induced such action or forbearance by Plaintiff FIDG.

141. Plaintiff FIDG suffered detriment caused by reliance on UHC's misrepresentations.

142. As a result, FIDG suffered damages.

COUNT IV

ACTION FOR VIOLATION OF THE FLORIDA RICO ACT,

CHAPTER 895, FLORIDA STATUTES

143. This is a cause of action against UHC for violation of Florida's Racketeer Influenced Corrupt Organization (RICO) Act, Chapter 895, Florida Statutes, for damages in excess of \$15,000, exclusive of attorney's fees and costs, pleaded in the alternative to or in addition to the other counts of this complaint.

144. Plaintiff incorporates all allegations made in Paragraphs 1 through 110, 113 through 121, 129 through 133, and 138 through 141, above.

145. This claim for relief arises under Section 895.05, Florida Statutes, for conduct and activities of UHC which are prohibited by Sections 895.02(1)(a)(24), (25), (26) and Section 895.02(1)(b), Florida Statutes.

146. UHC is an "aggrieved person" pursuant to Section 895.05(6), Florida Statutes.

147. The conduct of UHC set forth herein constitutes violations of Florida's RICO Act as set forth in paragraph 145 above.

148. UHC has violated Section 895.03(1), Florida Statutes, by using and investing income received from a pattern of racketeering, directly or indirectly, to establish and operate an enterprise, and has violated Section 895.03(3) by conducting or participating, directly or indirectly, in the enterprise through a pattern of racketeering activity.

149. As a direct result, Plaintiff FIDG has been injured in its business or property by both the predicate acts which make up UHC's patterns of racketeering activity and its investment and reinvestment of income therefrom to operate, expand and perpetuate the enterprise.

150. Specifically, Plaintiff has been injured in its business and property by the denial of payments for covered, medically necessary services that it has rendered to UHC's insureds, by reductions in such payments when made, by late payments, by having its payments wrongfully reduced, by having its legitimate claims denied, by having UHC falsely claim that UHC had not received FIDG's claims when it had, by paying FIDG based on false prescription drug costs and other manipulations of the claims process, and by the loss of interest on both late and withheld payments.

151. Section 895.05(1)(c), Florida Statutes, specifically authorizes the Court to order the dissolution of UHC.

152. Section 895.05(1)(d), Florida Statutes, specifically authorizes the Court to order the revocation of UHC's licenses in Florida, including its HMO license.

COUNT V

ACTION FOR BREACH OF IMPLIED DUTY OF GOOD FAITH

AND FAIR DEALING

153. This is an action against UHC for breach of the implied duty of good faith and fair dealing, for damages in excess of \$15,000, exclusive of attorney's fees and costs, pleaded in the alternative to or in addition to the other counts of this complaint.

154. Plaintiff incorporates all allegations in Paragraphs 1 through 110 above.

155. As previously alleged, UHC breached express terms of the Contract by making false or misleading statements, by wrongfully denying and downcoding claims, by wrongfully failing to pay claims, and by using manipulative devices to reduce payments due to Plaintiff, while inducing it to keep treating UHC's members.

156. A duty of good faith and fair dealing is implicit in all enforceable contracts under Florida law, and implied in the performance of every term of an express contract.

157. By repeatedly and systematically engaging in practices that lead to wrongful denial of claims it received from FIDG, and other actions alleged herein, UHC continually demonstrated bad faith in performing the express terms of this enforceable contract.

158. Plaintiff was injured by UHC's bad faith and unfair dealing because it continually relied on assurances made by UHC that UHC would perform its obligations under the contracts alleged herein, and the other false promises and misrepresentations made to it by UHC.

159. UHC's ongoing failure to follow through on its promises and assurances have and will continue to cause Plaintiff economic loss and hinder Plaintiff's performance of the contracts alleged herein by causing Plaintiff to provide medications, equipment and medical care for UHC's members without being paid for them or being paid an unfairly low amount for them.

160. As a result, FIDG suffered damages.

COUNT VI

ACTION FOR UNJUST ENRICHMENT

161. This is an action for unjust enrichment against UHC, within the jurisdiction of this Court, for damages in excess of \$15,000 exclusive of attorney's fees and costs, pleaded in the alternative to or in addition to the other counts of this complaint.

162. Plaintiff incorporates all allegations in Paragraphs 1 through 110 above.

163. For purposes of this Count, FIDG alleges none of the contracts referred to herein applied to the actions described in this Count and that the actions described herein were outside of the coverage of the said contracts.

164. As a health maintenance organization, UHC has members from whom it collects fees and to whom it owes an obligation to provide health maintenance services.

165. By having FIDG to provide services, medications and equipment to its members and then by not paying FIDG a correct or fair price for doing this, UHC is obtaining benefit.

166. By treating UHC's members (FIDG's patients), Plaintiff FIDG conferred a benefit upon UHC.

167. UHC is aware of this benefit, solicited it and accepted it.

168. However, UHC retains these benefits by denying, diminishing and delaying payment for these services while continuing to induce FIDG to provide them.

169. It would be inequitable to allow UHC to retain these benefits under the circumstances, and it is unjustly enriched thereby.

170. UHC continues to unjustly enrich itself in this fashion.

171. As set forth above, Plaintiff has no adequate remedy at law for UHC's continuing actions that led to its unjust enrichment.

172. Plaintiff FIDG suffered damages as a result.

COUNT VII

STATUTORY ACTION FOR VIOLATION OF FLORIDA PROMPT PAY ACT,

SECTION 641.3155, FLORIDA STATUTES

173. This is an action against UHC for violation of Section 641.3155, Florida Statutes ("the Florida Prompt Pay Act"), within the jurisdiction of this Court, for damages in excess of \$15,000 exclusive of attorney's fees and costs, pleaded in the alternative to or in addition to the other counts of this complaint.

174. Plaintiff incorporates all allegations in Paragraphs 1 through 110 above.

175. Plaintiff FIDG makes claim against UHC for all claims it submitted after the effective date of the Florida Prompt Pay Act.

176. Section 641.3155(2)(a), Florida Statutes, required UHC to pay all clean claims submitted by FIDG which it did not contest or deny, within 35 days.

177. Section 641.3155(2)(b), Florida Statutes, required UHC to notify FIDG in writing of the reasons therefore within 35 days, if it denied or contested any claim or any portion of a claim submitted by FIDG.

178. Section 641.3155(2)(b), Florida Statutes, further required UHC to notify FIDG in writing within 45 days of the reasons therefore, if it denied or contested any claim or any portion of a claim, after FIDG had resubmitted it to UHC or provided additional information on the claim to UHC.

179. Section 641.3155(3), Florida Statutes, requires UHC to pay a penalty of ten percent (10%) per year on all overdue claims (claims paid in violation of Sections 641.3155(2)(a) or (b), Florida Statutes).

180. Section 641.3155(4), Florida Statutes, states:

A health maintenance organization shall pay or deny any claim no later than 120 days after receiving the claim. Failure to do so creates an uncontestable obligation for the health maintenance organization to pay the claim to the provider.

181. UHC has violated Sections 641.3155(2)(a), 641.3155(2)(b), and Section 641.3155(4), Florida Statutes, by failing to pay or deny FIDG's claims within 35 days of submission, failing to provide FIDG adequate written explanations for denying and contesting claims or portions of claims, for failing to pay or deny resubmitted claims within 45 days, and failing to pay claims within 120 days.

182. Plaintiff has an implied right of action because it is a member of a class for whose benefit the statute was enacted, because legislative intent that there be a way to effectuate the specific liability imposed by the statutes is manifest, because implication of a private right of action is consistent with the purpose of the statutes, and because neither of the statutes preclude a private right of action.

183. Accordingly, FIDG is entitled to payment of all claims or portions of claims it has submitted that UHC did not pay or deny within 35 days, any claims or portions of claims it resubmitted to UHC which UHC failed to pay or deny within 45 days, and any claims or portions of claims that UHC failed to pay or deny within 120 days.

184. Additionally, FIDG is entitled to payment of at least ten percent (10%) per year from UHC for all such claims or portions of claims not paid in accordance with the time limits set forth above.

COUNT VIII

ACTION FOR HMO UNFAIR CLAIM SETTLEMENT PRACTICES

IN VIOLATION OF SECTION 641.3903, FLORIDA STATUTES

185. This is an action against UHC for violations of Section 641.3903, Florida Statutes, within the jurisdiction of this Court, for damages in excess of \$15,000, exclusive of attorney's fees and costs, pleaded in the alternative to or in addition to the other counts of this complaint.

186. Plaintiff incorporates all allegations in Paragraphs 1 through 106 above.

187. Section 641.3903, Florida Statutes, specifically prohibits health maintenance organizations such as UHC from committing certain types of conduct, and labels these as "unfair methods of competition and unfair or deceptive acts or practices."

188. The acts of UHC as set forth herein specifically violate Sections 641.3903(5)(c)(1), (2), (3), (4) and(9) and constitute "unfair claim settlement practices."

189. UHC has committed these acts with such frequency as to indicate a general business practice.

190. Plaintiff has an implied right of action because it is a member of a class for whose benefit the statute was enacted, because the legislative intent that there be a way to effectuate the specific liability imposed by the statutes is manifest, because implication of a private right of action is consistent with the purpose of the statutes, and because the statutes preclude a private right of action.

191. Plaintiff FIDG has been damaged as a result.

COUNT IX

ACTION FOR DECLARATORY JUDGMENT

192. This is an action against UHC for a declaratory judgment, pursuant to Section 86.011, Florida Statutes, within the jurisdiction of this Court, pleaded in the alternative to or in addition to the other counts of this complaint.

193. Plaintiff incorporates all allegations made in Paragraphs 1 through 110 above.

194. Plaintiff FIDG believes the existing contracts it has with UHC and the applicable Florida statutes, including Sections 641.28, 641.3155, 641.3903, and Chapter 895, Florida Statutes, apply to UHC and should be interpreted in such a manner as to require UHC to pay the claims made by FIDG as it has alleged herein.

195. Furthermore, a declaratory judgment is required so as to guide the parties in their future relationship.

196. A bona fide, actual, present practical need for a declaration exists.

197. The declaration requested concerns a present, ascertained or ascertainable state of facts or present controversy as to a state of facts.

198. A privilege or right of the Plaintiff is dependent upon the facts or the law applicable to the facts.

199. The Plaintiff and the Defendant have an actual, present, adverse and antagonistic interest in the subject matter, either in law or in fact.

200. The relief sought by the Plaintiff is not merely giving of legal advice or the answer to questions propounded for curiosity.

WHEREFORE, FIDG prays for a declaratory judgment setting forth its rights under Florida law and in accordance with the existing contract or contracts it has with UHC concerning whether or not UHC is obligated to pay FIDG the amounts claimed by FIDG herein now and in the future.

COUNT X

ACTION FOR INJUNCTIVE RELIEF

201. This is an action against UHC for injunctive relief, both temporary and permanent, within the jurisdiction of this Court, pleaded in the alternative to or in addition to the other counts of this complaint.

202. Plaintiff incorporates all allegations made in Paragraphs 1 through 110 above.

203. As set forth in Count IV above, UHC has violated, and continues to violate Sections 895.03(1) and (3), Florida Statutes, and will continue to do so in the future.

204. As set forth in Count VIII above, UHC has committed and continues to commit violations of Section 641.3903, Florida Statutes.

205. UHC's automated scheme to deny, reduce and delay payments to Plaintiff, and its use of the same automated program, as well as other manipulative devices to reduce capitation payments due Plaintiff, are ongoing problems that will continue to cause Plaintiff economic losses and threaten its ability to practice medicine and serve the public health.

206. A money judgment in this case will only compensate Plaintiff for past losses. It will not stop UHC's interference in medical treatment decisions, and it will not stop UHC from

continuing to confiscate the money Plaintiff earns, and that is necessary to maintain its practice on an ongoing basis.

207. Additionally, Plaintiff FIDG will suffer irreparable harm from the acts of UHC.

208. Enjoining UHC from committing these violations in the future and declaring their invalidity is appropriate as the Plaintiff has no adequate remedy at law.

209. Plaintiff FIDG will suffer irreparable harm unless the status quo is maintained until trial on the merits.

210. Plaintiff has no adequate remedy to protect it in the law.

211. Plaintiff has a substantial likelihood of success on the merits.

212. A temporary injunction will serve the public interest.

213. The Plaintiff will suffer additional hardships in the future if the Defendant is allowed to continue its injurious conduct.

214. The interests of third persons and of the public will be served by the entry of a permanent injunction.

215. An injunction can be practically and adequately framed and enforced.

WHEREFORE, FIDG prays for:

A. A permanent injunction against UHC granting FIDG an Order:

(1) Preventing UHC from employing processing techniques (and other claims processing procedures) that use improper cost-based criteria to reject claims, that improperly downcode and bundle procedures, that ignore modifiers and that otherwise improperly alter or

adjust claims as a means of denying or reducing payments due Plaintiff for rendering covered, medically necessary services to UHC's insureds; and

(2) Preventing UHC from treating as "pending" claims that are ripe for payment and intentionally understaffing its claims department as a means of delaying payments due Plaintiff for rendering covered, medically necessary services to UHC's insureds;

B. A temporary injunction imposing the above until there is a final judgment on this matter.

DEMAND

ACCORDINGLY, Plaintiff FIDG prays for the following damages or relief against Defendant UHC, in the alternative:

- A. Damages in excess of \$15,000;
- B. The statutory penalty of ten percent (10%) per year for all monies owed to FIDG pursuant to Section 641.3155, Florida Statutes;
- C. Prejudgment interest on all liquidated amounts;
- D. Postjudgment interest;
- E. An Order dissolving UHC, as authorized by Section 895.05(1)(c), Florida Statutes;
- F. An Order revoking or suspending the license of UHC as authorized by Section 895.05(1)(d), Florida Statutes;
- G. A declaratory judgment as set forth in Count IX above;
- H. A temporary injunction against UHC as set forth in Count X above, until a final decision can be had on this case;

- I. A permanent injunction as set forth in Count X above;
- J. Attorney's fees and costs as authorized by contract and by statute, as set forth herein; and
- K. Such other relief as this Honorable Court may deem just and proper, in law or in equity.

REQUEST FOR JURY TRIAL

FIDG requests a trial by jury on all issues so triable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Federal Express, priority overnight delivery, transmission, to: David J. Armstrong, Esquire, Law Offices of Steven M. Ziegler, P.A. (Attorneys for the Defendant, United Health Care), Presidential Circle, 4000 Hollywood Boulevard, Suite 375 South, Hollywood, Florida 33021, on this _____ day of July, 2003.

GEORGE F. INDEST III, ESQUIRE

Board Certified in Health Care Law

Florida Bar No.: 382426

GEORGE F. INDEST III, P.A.

THE HEALTH LAW FIRM

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**ATTORNEYS FOR PLAINTIFF,
FLORIDA INFECTIOUS DISEASE**

GROUP, P.A.

EXHIBITS:

- "A" - 1995 Agreement between CAC-Ramsey Health Plans, Inc., and Carmelo M. Licitra, M.D.
- "B" - 1996 Agreement between CAC-United Healthcare Plans of Florida, Inc., and Licitra and Brooks, P.A.
- "C" - 1999 Amendment to 1996 Agreement between CAC-United Healthcare Plans of Florida, Inc., and Licitra and Brooks, P.A.
- "D" - December 15, 1999 Amendment to 1996 Agreement between CAC-United Healthcare Plans of Florida, Inc., and Licitra and Brooks, P.A.
- "E" - Receipt for claims signed by Linda Anderson of UHC dated 6/29/2001
- "F" - UHC Letter to FIDG, dated July 26, 2001
- "G" - Telefax correspondence from FIDG to Yolanda at UHC dated 8/9/1999
- "H" - Message left by Yolanda of UHC for Susan Anderson of FIDG on 3/2/2000
- "I" - Telefax correspondence from FIDG to Yolanda at UHC dated 3/3/2000
- "J" - List of claims submitted by FIDG which UHC did not pay or deny within 45 days (List 1)
- "K" - List of claims which FIDG billed to UHC but for which it did not receive payment as specified (List 2)
- "L" - List of claims which FIDG billed to UHC but for which it did not receive payment as specified (List 3)
- "M" - List of claims submitted by FIDG for which UHC denied payment or paid \$0.00 (List 4)