

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

103-019690

JIA LE ZHANG,
1325 S. 92nd Street,
West Allis, Wisconsin 53214,

Case No. _____

Individually, and on Behalf of All Others
Similarly Situated,

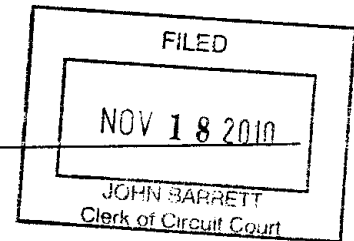
Case Classification Codes:
30106 (Intentional Tort)
30301 (Money Judgment)

Plaintiff,

v.

UNITEDHEALTHCARE
INSURANCE COMPANY,
185 Asylum Street,
Hartford, Connecticut 06103

Defendant.



CLASS ACTION COMPLAINT

Plaintiff, Jia Le Zhang (“Plaintiff” or “Zhang”), by his attorneys, Shepherd, Finkelman, Miller & Shah, LLP, brings this class action against Defendant, UnitedHealthcare Insurance Company (“UHC” or “Company”), on behalf of himself and all other persons similarly situated, and hereby alleges as follows:

SUMMARY OF CLAIMS

1. This class action lawsuit arises from UHC’s unlawful practice of refusing to process and pay health insurance claims submitted by or on behalf of students attending colleges or universities in the State of Wisconsin who are insured under UHC’s “StudentResources” health insurance policies unless those students first agree to sign a document titled “Subrogation/Right of Recovery Agreement” (“Subrogation Agreement”), an unapproved

insurance policy form that UHC improperly uses in an attempt to alter the terms of the students' insurance coverage. Specifically, by using the Subrogation Agreement, UHC attempts to obtain a right to "first dollar" recovery on subrogation claims, contrary to Wisconsin's long-established "made whole" doctrine. If an insured student signs the Subrogation Agreement (which UHC has never filed with the Wisconsin Insurance Commissioner for approval), then he or she purportedly waives the right to be "made whole" before UHC can recover in subrogation. If the insured student refuses to sign the unapproved and illegal Subrogation Agreement, then UHC wrongfully refuses to process or pay his or her health insurance claims.

2. UHC's routine use of the Subrogation Agreement with respect to claims made by insured students under its StudentResources policy is illegal and constitutes insurance bad faith. There is no good faith basis for UHC to require insured students to sign Subrogation Agreements before their claims are processed, and UHC's refusal to process and pay health insurance claims unless and until a student signs the illegal form is unreasonable.

3. UHC either knows or reasonably should know that its routine use of the Subrogation Agreement and its refusal to pay claims, unless students agree to sign that form, is unreasonable and illegal. Indeed, the StudentResources policy forms that UHC actually filed with the Wisconsin Insurance Commissioner contain a "made whole" subrogation provision, which is consistent with Wisconsin law. Despite this, UHC routinely ignores and refuses to comply with this approved subrogation provision, and instead engages in the illegal practice of requiring insured students to sign Subrogation Agreements that are directly contrary to the approved "made whole" provision, thereby purportedly requiring those students to waive their subrogation rights before their claims will be processed.

4. This Class Action Complaint alleges claims for common law bad faith and for declaratory and injunctive relief, and seeks, *inter alia*, damages on behalf of Plaintiff and similarly situated individuals, together with appropriate declaratory relief, and an injunction prohibiting UHC from continuing its use of the Subrogation Agreement and similar unapproved policy forms.

THE PARTIES

5. Plaintiff, Jia Le Zhang, is a citizen of Wisconsin with his domicile at 1325 S. 92nd Street, West Allis, Wisconsin. During 2008 and 2009, Zhang was a student at the Milwaukee Institute of Art and Design, and was insured through UHC under StudentResources health insurance coverage that he was entitled to purchase because of his status as a student.

6. Defendant, UnitedHealthcare Insurance Company, is an insurance company that is licensed and registered with the Wisconsin Insurance Commissioner to do insurance business in Wisconsin, and has corporate offices at 185 Asylum Street, Hartford, Connecticut. At all relevant times, UHC and/or its predecessors or affiliates sold StudentResources health insurance coverage to students in Wisconsin through a number of colleges and universities.

CLASS ACTION ALLEGATIONS

7. Plaintiff brings this lawsuit on behalf of himself and all other persons similarly situated, as members of a proposed class, defined as follows:

All students who purchased StudentResources health insurance from UHC while they were students attending colleges or universities in Wisconsin, and who were asked to sign a Subrogation Agreement or similar unapproved policy form purporting to give UHC a right to first-dollar recovery on subrogation claims ("Class").

Excluded from the Class are officers and directors of Defendant, its subsidiaries and affiliates, Plaintiffs' attorneys and their immediate family, as well as any judge presiding over this action, the judge's spouse and immediate family.

8. This action is brought and may properly be maintained as a class action pursuant to Wis. Stat. § 803.08. This action satisfies the numerosity, typicality, adequacy, predominance, and/or superiority requirements for purposes of bringing a class action.

9. Numerosity/Impracticability of Joinder: On information and belief, the members of the Class number in at least the thousands. As a result, the Class is so numerous that joinder of all members in a single action is impracticable. Class members should be readily identifiable from information and records in UHC's possession or control. The disposition of these claims will provide substantial benefits to the Class.

10. Commonality and Predominance: There is a well-defined community of interest, and common questions of law and fact predominate over any questions affecting only individual members of the Class. These common legal and factual questions, which do not vary from one Class member to another, and which may be determined without reference to the individual circumstances of any Class member, include, but are not limited to, the following:

(a) Whether UHC engages in unreasonable claims handling practices when it requires its insured students to sign a Subrogation Agreement or similar unapproved policy forms before it will process or pay their insurance claims;

(b) Whether UHC knew or reasonably should have known that its claims handling practices involving the use of the Subrogation Agreement or similar unapproved policy forms was unreasonable and in violation of established Wisconsin law and the approved subrogation provisions contained in its StudentResources policies;

(c) Whether declaratory and/or injunctive relief is appropriate to require UHC to discontinue its improper use of the Subrogation Agreements; and

(d) What damages, including potential punitive damages, should be awarded to the insured students who were denied their rights under the pertinent insurance policies and Wisconsin subrogation law by reason of UHC's improper use of the Subrogation Agreements.

11. Typicality of Claims: Plaintiff's claims are typical of the claims of the Class because Plaintiff and all Class members were injured by the same wrongful practices. Plaintiff's claims arise from the same practice and course of conduct that give rise to the claims of Class members, and are based on the same legal theories. The only difference may be the amount of damages sustained, which can be determined readily, and does not bar class certification.

12. Adequacy of Representation: Plaintiff is a representative who will fully and adequately protect the interests of the members of the Class, and has retained class counsel who are experienced and qualified in prosecuting class actions, including consumer and financial services class actions and other forms of complex litigation. Neither Plaintiff nor his attorneys ~~have interests that are contrary to or conflicting with those of the Class.~~

13. Superiority/Manageability: A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all Class members is economically unfeasible and procedurally impracticable. The likelihood of individual Class members prosecuting separate claims is remote, and even if every Class member could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Individual members of the Class do not have significant interests in individually controlling the prosecution of separate actions, and individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments

and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual issues. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. Relief concerning Plaintiff's rights under the law, as herein alleged, and with respect to the Class would be proper. UHC has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with regard to the Class as a whole.

GENERAL FACTUAL ALLEGATIONS

14. Plaintiff purchased StudentResources health insurance ("Policy") from UHC while he was a student at the Milwaukee Institute of Art and Design. Upon information and belief, a true and correct copy of the Policy, or the pertinent provisions thereof (as provided to Plaintiff by UHC), is attached hereto as *Exhibit A*.

15. As set forth in the Policy, UHC is not allowed to recover in subrogation unless and until an insured student is "made whole." Specifically, the Policy provides as follows:

SUBROGATION: The Company [UHC] shall be subrogated to all rights of recovery which any Insured person has against any person, firm or corporation to the extent of payments from benefits made by the Company to or for the benefit of an Insured Person. The Insured shall execute and deliver such instruments and papers as may be required and do whatever else is necessary to secure such rights of the Company. *The Company shall only recover that portion paid by the Company which is in excess of the amount necessary to make such Insured whole as a result of his loss.* The insured shall be entitled to recoup his general damages, which is (sic) not limited to medical expenses, from the tort-feasor before subrogation provided that in so doing, the Insured does not prejudice the rights of the Company. (Emphasis added)

Policy, p. 4. This subrogation provision is part of an insurance policy form (COL-06-WI) that UHC submitted to the Wisconsin Insurance Commissioner for approval.

16. On or about December 10, 2008, Plaintiff was in a motor vehicle that was

involved in an accident in Milwaukee, Wisconsin. Plaintiff sustained physical injuries in that automobile accident, and suffered other damages. In connection with his physical injuries, Plaintiff incurred medical expenses.

17. Plaintiff, and his medical providers, submitted claims to UHC seeking reimbursement for his medical expenses associated with this automobile accident.

18. On or about June 12, 2009, UHC sent a Subrogation Agreement to Plaintiff and requested that it be signed by him and returned to UHC. A true and correct copy of the Subrogation Agreement is attached hereto as *Exhibit B*.

19. Plaintiff responded that he was unwilling to sign the Subrogation Agreement because it was contrary to the terms of the Policy and Wisconsin law, both of which required that Plaintiff be "made whole" before UHC could recover in subrogation.

20. Contrary to long-established Wisconsin law and the terms of the Policy, which recognize the "made whole" doctrine, the Subrogation Agreement purported to give UHC "all rights of recovery" that Plaintiff had with respect to third parties, and allegedly would have required Plaintiff to pay UHC all amounts received from third parties. In other words, the Subrogation Agreement purports to give UHC the right to a "first dollar" subrogation recovery.

21. Upon being advised that Plaintiff was declining to sign the Subrogation Agreement, UHC refused to process or pay his medical claims and, to date, has failed and refused to pay these expenses.

22. Despite Plaintiff, and his attorney, repeatedly explaining to UHC that the Subrogation Agreement violated Wisconsin subrogation law and the terms of UHC's own Policy, UHC continued to take the position that Plaintiff needed to sign the document and refused to process or pay any of his claims unless he did.

23. Given UHC's insistence that it would not pay Plaintiff's claims absent a signed Subrogation Agreement, Plaintiff reasonably believes that UHC has a routine practice of requiring other similarly situated students who purchased StudentResources health insurance in Wisconsin to sign the same or similar forms as a precondition of processing or paying their claims, and that UHC routinely refuses to process and pay claims unless these unapproved and illegal forms are signed.

COUNT I
(Insurance Bad Faith)

24. Plaintiff incorporates herein by reference each of the allegations above.

25. At all relevant times, UHC either knew or reasonably should have known that the Subrogation Agreement was in direct violation of and contrary to Wisconsin law and the terms of the Policy, both of which plainly require an insured student to be "made whole" before UHC can recover in subrogation.

26. UHC's practice of requiring Plaintiff and other insured students to sign Subrogation Agreements as a precondition to the processing or payment of their claims is unreasonable and a clear violation of Wisconsin law and the terms of its own StudentResources policies.

27. As a direct result of UHC's insurance bad faith, Plaintiff has sustained damages in an amount to be determined at trial.

28. UHC has engaged in insurance bad faith and is liable to Plaintiff and other Class members for any and all damages that they sustained as a result of its bad faith conduct.

29. UHC's bad faith conduct, as alleged herein, has been malicious and intentionally designed to deprive Plaintiff and other Class members of their subrogation rights and money that they are entitled to receive under Wisconsin's "made whole" subrogation law.

30. Plaintiff and other Class members are entitled to an award of punitive damages based on UHC's malicious conduct and its intentional deprivation of their subrogation rights and recoveries.

COUNT II
(Declaratory and Injunctive Relief)

31. Plaintiff incorporates herein by reference each of the allegations above.

32. Declaratory relief and other relief is also appropriate pursuant to Wis. Stat. § 806.04, to the extent there is a genuine and justiciable controversy between the parties related to UHC's illegal conduct, as alleged herein. A justiciable controversy exists because Plaintiff and other Class members have a claim of right and legally protected interest with respect to the subrogation recoveries at issue, and their interests are adverse to those of UHC, which seeks to deprive Plaintiff and other Class members of their subrogation interests unlawfully. This controversy is ripe, as shown by UHC's bad faith refusal to process or pay Plaintiff's claims unless he signs an illegal Subrogation Agreement.

33. There is no proper legal basis for UHC taking the position that it will not process or pay an insured's medical claims under StudentResources policies unless the insured first signs illegal Subrogation Agreements.

34. Plaintiff and other Class members have been irreparably harmed and will continue to be irreparably harmed by reason of UHC's wrongful practice of requiring them to sign illegal Subrogation Agreements. Such irreparable harm includes, *inter alia*, injury to their credit reputations with respect to unpaid medical bills and the inability to obtain medical services necessary for the treatment of their illnesses and injuries.

35. The harm sustained by Plaintiff and other Class members vastly outweighs any possible legal interest that UHC may have in continuing the unlawful practice alleged herein.

36. To protect against and prevent the continuing irreparable harm being sustained by Plaintiff and other Class members, an injunction prohibiting UHC's illegal practices is warranted and necessary.

37. Additional supplemental relief is also appropriate under Wis. Stat. § 806.04 in light of UHC's bad faith, as alleged herein, including, *inter alia*, an award of attorneys' fees, costs and litigation expenses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of himself and all Class Members, prays for judgment against UHC as follows:

- A. For an order certifying that this action may be maintained as a class action; appointing Plaintiff and his counsel to represent the Class, and directing that reasonable notice of this action be given by UHC to Class members;
- B. For a permanent injunction enjoining UHC, its officers, directors, employees, agents, partners or representatives, successors, and any and all persons acting in concert, from directly or indirectly engaging in the wrongful acts and practices described above;

- C. For an order directing disgorgement or restitution of all improperly collected subrogation recoveries and payments, and interest thereon;
- D. For general damages to be proven at the time of trial;
- E. For punitive damages;
- F. For an award of costs and expenses incurred in this action;
- G. For reasonable attorneys' fees as provided by law;
- H. For pre- and post-judgment interest as provided by law in an amount according to proof at trial; and

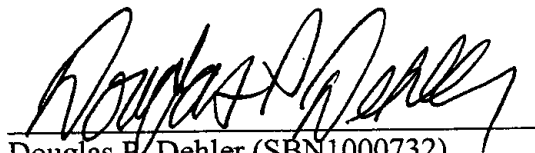
I. For such other and further relief as the Court may deem necessary and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all causes of action so triable.

Dated this 18th day of November, 2010

**SHEPHERD, FINKELMAN, MILLER
& SHAH, LLP**



Douglas H. Dehler (SBN1000732)
111 East Wisconsin Avenue, Suite 1750
Milwaukee, WI 53202
Telephone: 414/226-9900
Facsimile: 414/226-9905
Email: ddehler@sfmslaw.com

James C. Shah
SHEPHERD, FINKELMAN, MILLER
& SHAH, LLP
35 East State Street
Media, PA 19063
Telephone: 610/891-9880
Facsimile: 610/891-9883
Email: jshah@sfmslaw.com

Nathan Zipperian
SHEPHERD, FINKELMAN, MILLER
& SHAH, LLP
1640 Town Center Circle, Suite 216
Weston, FL 33326
Telephone: 854/515-0123
Facsimile: 854/515-0124
Email: nzipperian@sfmslaw.com