

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED HEALTHCARE SERVICES, INC.,	§	
UNITED HEALTHCARE INSURANCE	§	
COMPANY,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	NO. 3:20-CV-00301-E
	§	
SYNERGEN HEALTH, LLC,	§	
	§	
Defendant.	§	

MEMORANDUM OPINION AND ORDER

Before the Court is the Motion to Dismiss filed by defendant Synergen Health, LLC (Synergen) (Doc. 12). Having carefully considered the motion, the parties' briefing, and applicable law, the Court finds the motion should be granted in part and denied in part.

BACKGROUND

The following is from the First Amended Complaint filed by plaintiffs United Healthcare Services, Inc. and UnitedHealthcare Insurance Company (collectively, UHC) (Doc. 1). UHC provides health insurance and administers health plan benefits to insureds or plan participants (members), pursuant to a variety of health care benefit plans. Providers submit claims for payment to UHC, and information, including the servicing provider's billing credentials, included on the claim forms is material to UHC.

Providers often employ companies to oversee their billing processes and act as their billing agents. Providers and their billing agents know that UHC relies on the accuracy of information in claim forms. By submitting a claim to UHC, a provider and its billing agent are affirming that the information in that claim is accurate and should be relied on by UHC.

Synergen is a revenue cycle management and billing company. It verifies demographics in claim submissions, submits (and resubmits) claims to payers (including UHC), provides software that integrates with practice management systems, creates reports, runs analytics, monitors payments and denials, and follows up with payers regarding the same. Synergen performed a variety of billing and revenue cycle management tasks for Next Health, LLC (Next Health), an entity created in 2014 to act as the parent company to a wide array of ancillary health care service businesses. Synergen kept a certain percentage of what Next Health collected from the claims that Synergen submitted to payers on Next Health's behalf.

In addition to the entities that were used to actually submit claims, Next Health owned and controlled dozens of other subsidiaries and affiliates, which it used to funnel kickbacks, disguised in various forms, to physicians who referred patients to Next Health for grossly-overpriced ancillary services. Synergen, which dealt with Next Health and its web of subsidiary entities as a single unit, created detailed daily, weekly, and monthly reports that analyzed all of Next Health's lab operations. Synergen identified when and how payers were implementing fraud, waste, and abuse prevention measures and helped Next Health formulate plans to circumvent those measures. Synergen then executed those plans by altering claims (or causing claims to be altered) and submitting the claims to UHC.

In 2015, Synergen submitted claims to UHC using the billing credentials of three Next Health subsidiary labs: United Toxicology, US Toxicology, and Medicus Laboratories. In 2016, Synergen submitted claims to UHC using billing credentials for two more Next Health entities: American Laboratories Group ("ALG") and True Labs.

In early September 2015, UHC began denying claims submitted to it by United Toxicology unless or until United Toxicology provided UHC with medical records supporting the claims.

Synergen alerted Next Health to the claim denials. Knowing it would not be able to provide supporting medical records, Next Health worked with Synergen to figure out a way around the denials. They agreed to stop submitting claims to UHC that used United Toxicology's billing credentials, and, from December 2015 to February 2016, Synergen knowingly submitted claims for United Toxicology lab services using US Toxicology's billing information. Synergen also fraudulently used Medicus's billing information to submit claims for lab services performed by United Toxicology.

By June 2016, UHC was denying claims submitted by United Toxicology, U.S. Toxicology, and Medicus due to member complaints and Next Health's inability to substantiate its services by providing medical records. Synergen worked with Next Health to create new billing profiles for two Next Health subsidiaries, ALG and True Labs. Thereafter, and through December 2016, Synergen knowingly submitted claims to UHC that falsely listed the billing information for ALG and True Labs when other labs had performed the testing.

Synergen also shared ways to circumvent payer investigations and denials with other client providers that sought payment from UHC. And, Synergen knowingly submitted claims to UHC for other providers that contained false information about the true costs of the services reflected, the provider who performed the services, the provider from whom the services were ordered, and the provider to whom UHC would be making payment.

In its complaint, UHC asserts claims for fraud and negligent misrepresentation against Synergen arising from Synergen's submission of claims to UHC. Synergen seeks dismissal of the claims under Federal Rule of Civil Procedure 12(b)(7) because UHC failed to sue Next Health and Next Health entities, which were "active participants" in the alleged scheme and, thus, indispensable parties in this action. Alternatively, Synergen moves for dismissal under Rule

12(b)(6) because (1) UHC failed to satisfy Rule 9(b)'s heightened pleading standard with regard to its allegations about "other providers," and (2) UHC's own allegations establish that its negligent misrepresentation claim is time barred.

FAILURE TO JOIN NEXT HEALTH PARTIES

Rule 12(b)(7) authorizes dismissal of an action for "failure to join a party under Rule 19." FED. R. CIV. P. 12(b)(7). Under Rule 19, "[a] person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if ... in that person's absence, the court cannot accord complete relief among existing parties." FED. R. CIV. P. 19(a)(1)(A).¹ If a necessary party cannot be joined, "the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." *Id.* 19(b). A party seeking dismissal must prove that an absent party is both necessary under Rule 19(a) and indispensable under Rule 19(b). *See Payan v. Continental Tire North America, Inc.*, 232 F.R.D. 587, 589 (S.D. Tex. 2005).

According to Synergen, the Next Health parties are necessary parties to this action, in which UHC seeks "to hold Synergen—a third party billing entity—solely responsible for Next Health's alleged scheme." UHC, however, has already sued Next Health and a number of other parties for the fraudulent scheme in a lawsuit currently pending in this Court. *See UnitedHealthcare Insurance Company, et al. v. Next Health, et al.*, No. 3:17-cv-00234-E-BT (Next Health case). Thus, Synergen contends UHC is attempting to "hedge its bets and get a separate bite at the same apple ... and present[] the same alleged harm and damages to different juries."

¹ Rule 19 also provides that a person must be joined if the "person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest." FED. R. CIV. P. 19(a)(1)(B). Synergen, however, relies on section (a)(1)(A), asserting the Court "cannot accord complete relief" in the absence of the Next Health parties.

“It has long been the rule that it is not necessary for all joint tortfeasors to be named as defendants in a single lawsuit.” *Temple v. Synthes Corp.*, 498 U.S. 5, 7 (1990); *see* FED. R. CIV. P. 19(a) Advisory Committee Notes (“a tortfeasor with the usual ‘joint-and-several’ liability is merely a permissive party to an action against another with like liability”). In *Haas v. Jefferson Nat’l Bank of Miami Beach*, 442 F.2d 394 (5th Cir. 1971), the Fifth Circuit found an exception in the case of an “active participant” in an alleged conversion of the plaintiff’s stock by the defendant bank. Specifically, the Fifth Circuit held that Glueck, who allegedly owned a one-half interest in the stock, was a necessary party to the action, which involved the bank’s alleged conversion of the stock after it delivered it to a second bank as collateral for Glueck’s loan. *Id.* at 398; *see Bates v. Laminack*, 938 F. Supp.2d 649, 660 (S.D. Tex. 2013) (noting *Haas* was decided on “the adjudication of rights to a *res*’ concept rather than creating an exception to the joint tortfeasor rule of dispensability”). The Fifth Circuit also concluded a subsidiary was a necessary party when the plaintiffs were seeking to impose liability on the parent company for the acts of the subsidiary, which was the “primary participant” in an alleged conversion of gravel. *Freeman v. Nw. Acceptance Corp.*, 754 F.2d 553, 559 (5th Cir. 1985).

Despite Synergen’s assertion otherwise, UHC does not seek to hold Synergen “solely responsible” for the conduct of the Next Health parties in this action. And, the Court finds Synergen has not established exceptional circumstances, like those present in *Haas* and *Freeman*, to support deviating from the rule that joint tortfeasors need not be named as defendants in a single action. Instead, the Court finds that it can accord complete relief as to UHC and Synergen in this action absent the Next Health parties. *See* FED. R. CIV. P. 19(a).

Further, Synergen fails to show that the Next Health parties could not be joined without destroying subject matter jurisdiction. *See Allstate Ins. Co. v. Plambeck*, No. 3-08-CV-0388-M,

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