

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Matthew T. Zilhaver, Individually and On	x	
Behalf of All Others Similarly Situated,	:	
	:	06-CV-2237 (JNE/SRN)
Plaintiff,	:	
	:	AMENDED CLASS ACTION
vs.	:	COMPLAINT FOR VIOLATIONS OF
	:	ERISA
UNITEDHEALTH GROUP INC.,	:	
L. ROBERT DAPPER, JAMES A.	:	
JOHNSON, WILLIAM G. SPEARS,	:	
MARY O. MUNDINGER, WILLIAM W.	:	JURY TRIAL DEMANDED
McGUIRE, and STEPHEN J. HEMSLEY,	:	
	:	
Defendants.	:	

Plaintiff Matthew T. Zilhaver, individually and on behalf of all other persons similarly situated (the “Participants”), and on behalf of the UnitedHealth Group 401(K) Savings Plan (the “Plan”)¹, by his attorneys, alleges the following for his Amended Complaint.

NATURE OF THE ACTION

1. Plaintiff, who was a Participant in the Plan during time periods relevant to this Complaint, brings this civil enforcement action under Section 502 (a) of the Employee Retirement Income Security Act (“ERISA”), 29 U.S.A. §1132(a), for plan-wide relief on behalf of a class of all Participants in the Plan for whose individual accounts Plan held shares of UnitedHealth Group, Inc. common stock (hereinafter referred to as “UnitedHealth” or the “Company”) as part of the UnitedHealth Group Stock Fund investment option in the Plan (the “Class”) at any time between

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The “Plan,” as referred to in this Complaint, includes the PacificCare Health Systems, Inc. Savings and Profit Sharing Plan, which was merged into the UnitedHealth Group 401(k) Savings Plan after UnitedHealth Group, Inc. acquired PacificCare Health Systems, Inc.

December 21, 2005 and May 24, 2006, inclusive (the “Class Period”). Defendants are the named and *de facto* fiduciaries of the Plan, who are deemed “fiduciaries” under the broad definition of fiduciary under section 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A). Plaintiff brings this action on behalf of the Plan and the Class pursuant to ERISA § 502(a)(2) and (3), 29 U.S.C. § 11132(a)(2) and (3).

2. As more fully set forth below, Defendants breached their fiduciary duties to the Plan and the Participants, including those fiduciary duties set forth in ERISA § 404, 29 U.S.C. § 1104, and Department of Labor (“DOL”) Regulations, 29 C.F.R. 2550. Defendants breached their fiduciary duties to the Participants in various ways, including, but not limited to, (i) misrepresenting and failing to disclose material facts to the Participants in connection with the administration of the Plan; (ii) failing to exercise their fiduciary duties to the Participants solely in the interests of the Participants for the exclusive purpose of providing benefits to Participants and their beneficiaries; (iii) failing to manage the Plan’s assets with the care, skill, prudence or diligence of a prudent person under the circumstances; (iv) imprudently failing to diversify the investments in the Plan so as to minimize the risk of large losses; and (v) permitting the Participants to hold UnitedHealth common stock when it was imprudent to do so, and when the Participants were not provided with timely, accurate and complete information concerning the Company as required by applicable law. As a result of these wrongful acts, pursuant to ERISA § 409(a), 29 U.S.C. § 1109(a), Defendants are personally liable to make good to the Plan the losses resulting from each such breach of fiduciary duty. In addition, under § 502(a)(3) of ERISA (29 U.S.C. § 1132(a)(3)), Plaintiff seeks other forms of appropriate equitable relief, including, without limitation, injunctive relief and, as available under applicable law, imposition of a constructive trust, restitution, and other monetary relief. Insofar as any Defendant is sued alternatively as a knowing participant in a breach of fiduciary duty for

equitable relief, Plaintiff intends to proceed pursuant to § 502(a)(3) of ERISA (29 U.S.C. § 1132(a)(3)).

3. Plaintiff alleges that the defendants breached their fiduciary duties by negligently misrepresenting and negligently failing to disclose material information necessary for Participants to make informed decisions concerning Plan assets and benefits and the appropriateness of investment in UnitedHealth stock, including, but not limited to, the backdating of stock option grants to Defendants William M. McGuire and Stephen J. Hemsley, the related concealment of the Company's true financial and operating condition, and the concealment of serious problems relating to the Company's senior management integrity and competence and legal compliance.

4. In fact, the Company and the defendants named herein have been involved in some of the most flagrant improprieties involving the backdating of executive stock options of the many public companies which are being investigated and/or prosecuted for violations in this area. As a result of the improprieties involving the backdating of executive stock options at UnitedHealth the Company has been damaged by abrupt changes in senior management and management distraction and uncertainty; by a need to restate previously-published earning statements; by tax liabilities which have yet to be fully computed or assessed; by the inability to timely file required reports with the SEC; by investigations by the SEC, United States Attorneys, Minnesota regulators and the IRS, the full consequences of which have not yet been realized, and by civil suits that are likely to cost the Company hundreds of millions of dollars. Defendants' unlawful and improper acts, described herein, have thus already resulted in a significant loss of value to the Company's common stock and to the value of units of the UnitedHealth Group Stock Fund held by Participants. Further, concealment from the Participants of the inappropriate unlawful backdating of executive stock

options and other improprieties alleged herein has deprived Participants of the opportunity to invest their retirement savings in prudent investment alternatives under the Plan which have performed better than Company common stock.

5. As discussed further herein, a law firm has investigated the Company's executive stock option practices and found long-standing and systematic wrongful practices, including that stock options to defendants McGuire and Hemsley were "likely" backdated, that the Company's internal controls in this area were inadequate and that, as a result, the Company has been exposed to substantial liabilities and uncertainties. The "Report of Wilmer Cutler Pickering Hale and Dorr LLP to the Special Committee of the Board of Directors of UnitedHealth Group, Inc." states in relevant part:

III. SUMMARY OF CONCLUSIONS

In summary:

"The measurement dates used by the Company for most of the 29 option grants we reviewed were not correct, and many of these grants were likely backdated.

The option grants made to newly-hired employees and employees receiving promotions were backdated as a matter of policy.

The grants to Dr. McGuire of 1 million options and to Mr. Hemsley of 500,000 options, dated October 13, 1999, in connection with their respective employment agreements, were likely backdated.

The full extent and nature of the financial relationships between Dr. McGuire and Mr. Spears, a member (and Chairman) of the Compensation Committee, that existed during the period when Dr. McGuire's 1999 employment agreement was renegotiated and that created a conflict of interest, likely were not disclosed to the Ad Hoc Committee or to the Board at the time.

A 1999 supplemental grant of options to employees and to senior management, which replaced previously issued options that were "suspended" (and later reactivated), was likely backdated. This supplemental grant amounted to a

“repricing” of the suspended options, which caused an adverse accounting consequence that was not recognized by the Company.

The reactivation of the suspended options amounted to a substantial new grant of options at a significant discount to many officers and employees. Given the size and unusual nature of this transaction, there should have been clear, written communications to the Compensation Committee expressly setting forth the amounts to be received by management in the “reactivated” grant, the rationale for this grant, and the accounting effect. The minutes should have reflected clearly the Committee’s deliberations on this important matter.

UnitedHealth’s internal controls related to option grants were inadequate.

Senior management failed to ensure that the option granting practices were appropriate.

Although it might have been better if members of the Compensation Committee had asked for an explanation for why decisions made at meetings were addressed in Written Actions and had focused more on the prices at which options were granted, the Directors were entitled to presume that matters brought before them for action were procedurally proper and consistent with applicable legal and accounting standards.

An appropriate tone at the top, adequate controls and discipline over the option granting process, and management transparency with the Board and its committees on executive compensation matters are basic and critical to the integrity of option grants. As described above, there were various failings in these areas.

JURISDICTION AND VENUE

6. Plaintiff’s claims arise under and pursuant to ERISA § 502, 29 U.S.C. § 1132.

7. This Court has jurisdiction over this action pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

8. Venue is proper in this District pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because this is the district where the Plan is administered, where the breaches took place and where one or more Defendants reside or may be found.

PARTIES

9. Plaintiff Matthew T. Zilhaver is a resident of the State of Colorado. Plaintiff Zilhaver was employed by PacifiCare Health Systems, Inc. from approximately October 2002 to approximately September 2005, during which time he was a participant in that company's 401(k) plan, the PacifiCare Health Systems, Inc. Savings and Profit Sharing Plan. When PacifiCare was acquired by UnitedHealth and its 401(k) plan was merged into the Plan Plaintiff Zilhaver became a Participant in the Plan and his holdings of PacifiCare common stock were converted into units of the UnitedHealth Group Stock Fund. As a result of the wrongdoing alleged herein the value of the units of the UnitedHealth Group Stock Fund held by Plaintiff and the Participants has decreased and, because the wrongdoing alleged herein was, until very recently, concealed from Plaintiff and the Participants, Plaintiff has been effectively deprived of the opportunity to invest his retirement savings in investment options available under the Plan which would have yielded better results and a significant increase in the retirement savings of Plaintiff.

10. Defendant UnitedHealth is a Minnesota corporation with its executive offices and principal place of business 990 Bren Road East, Minnetonka, MN 55343.

11. UnitedHealth was a fiduciary with respect to the Plan because it was the Sponsor of the Plan, because it was the Administrator of the Plan, because it was (with defendant Dapper) one of the "named fiduciaries" of the Plan, and because it disseminated to Participants Summary Plan Descriptions (individually and collectively, "SPD"). Fiduciaries of the Plan are required under ERISA to furnish certain information to Participants. For example, ERISA §101, 29 U.S.C. § 1021, requires the Plan's Administrator to furnish to Participants the SPD. ERISA §102, 29 U.S.C. §1022, provides that the SPD must apprise Participants of their rights and obligations under the Plan. The

SPD and all information contained or incorporated therein constitute representations in a fiduciary capacity upon which Participants are entitled to rely in determining the identity and responsibilities of fiduciaries under the Plan and in making decisions concerning their benefits and investment and management of the Plan's assets allocated to their accounts. The Company is also liable for the misconduct of the other defendants named herein under principles of agency and respondeat *superior*. Section 12.1.1 of the governing Plan document makes clear that the Company's responsibilities with respect to the Plan "shall be discharged by Sponsor's [the Company's] officers."

12. Defendant L. Robert Dapper ("Dapper") served as the Company's Senior Vice President, Human Capital during the Class Period. Commencing on August 1, 2002, when the UnitedHealth Group Plan Committee was disbanded and that Committee's functions assigned to Defendant Dapper, Defendant Dapper became a fiduciary and one of the named fiduciaries of the Plan. Defendant Dapper served as one of the fiduciaries of the Plan and as one of the named fiduciaries of the Plan throughout the Class Period. Defendant Dapper knew or should have known of the misconduct engaged in by the other defendants by the backdating of executive stock options at the Company and the authorization, ratification and approval of the unlawful practices. As noted above, the Wilmer Cutler Report makes clear that the improper and unlawful executive stock option practices at UnitedHealth were not isolated incidents or minor matters but were, instead, long-standing and systematic practices at the Company. If Defendant Dapper had exercised the diligence which he should have exercised as a named fiduciary of the Plan he would have uncovered the unlawful and improper practices engaged in by the other defendants and would, then, have been required to inform the Participants of the true state of affairs so that they could diversify out of Company stock and thereby avoid investment losses.

13. Defendant James A. Johnson (“Johnson”) was a member of the Company’s Board of Directors during the Class Period, as well as a member of the committee of the Board of Directors which had oversight responsibility for the Plan, namely, the Compensation and Human Resources Committee of the Board of Directors. The Company’s 2006 Proxy Statement (dated April 7, 2006) states in relevant part:

The Compensation and Human Resources Committee consists of Messrs. Johnson (Chair) and Spears and Dr. Munding, each of whom is an independent director under the rules of the New York Stock Exchange and the Securities and Exchange Commission. The Compensation and Human Resources Committee is responsible for overseeing our compensation, employee benefit and stock-based programs. The Committee also negotiates and administers our employment arrangements with our Chief Executive Officer and President and Operating Officer, performs the annual Chief Executive Officer and President and Chief Operating Officer evaluations, supervises incentive and equity-based compensation programs for our employees, and reviews and monitors director compensation programs. The Compensation and Human Resources Committee held four regular meetings and four special meetings in 2005.

14. Defendant Johnson authorized, approved and ratified the unlawful and improper backdating of executive stock options at UnitedHealth described in detail herein. Defendant Johnson is, moreover, is no stranger to the nationwide scandal currently plaguing many public companies in this area. Defendant Johnson was also the Chairman of the compensation and stock option committee at KB Home, another public company being investigated for the unlawful backdating of executive stock options. As noted in a *Wall Street Journal* article on August 23, 2006 entitled “KB Home Reviews Stock Options Given to CEO:”

“The stock-option grants at KB Home could complicate efforts to untangle stock-options timing problems at another company, UnitedHealth Group Inc. The chairman of KB Home’s compensation and stock-option committee from 1995 through 2000 was James A. Johnson, who also serves as a UnitedHealth director.”

15. Defendant William G. Spears (“Spears”) was a member of the Company’s Board of Directors during the Class Period. Defendant Spears was Chairman of the Compensation and Human Resources Committee at UnitedHealth from approximately 1999 to approximately 2004. He authorized, approved and ratified the backdating of the executive stock options described herein. As noted in the Wilmer Cutler Report, he also maintained close financial ties to Defendant McGuire which were not fully disclosed to other Company officials on a timely basis.

16. Defendant Mary O. Munding (“Munding”) was a member of the Company’s Board of Directors during the Class Period, as well as a member of the committee of the Board of Directors which had oversight responsibility for the Plan, namely, the Compensation and Human Resources Committee of the Board of Directors. Defendant Munding authorized, approved and ratified the backdating of executive stock options described herein.

17. Defendant William C. McGuire (“McGuire”) has been Chairman of the Board of Directors and Chief Executive Officer of UnitedHealth since 1991. Defendant McGuire was a fiduciary of the Plan during the Class Period. He has been a director of UnitedHealth since 1989. McGuire personally benefitted from the back-dated stock option grants described herein. Defendant McGuire authorized, approved and ratified the backdating of executive stock options described herein.

18. Defendant Stephen J. Hemsley has served as Chief Operating Officer of UnitedHealth since 1998 and President of UnitedHealth since 1999. He has been a director of UnitedHealth since 2000. Defendant Hemsley was a fiduciary of the Plan during the Class Period. Hemsley personally

benefitted from the back-dated stock option grants described herein. Defendant Hemsley authorized, approved and ratified the backdating of executive stock options described herein.

19. Defendants L. Robert Dapper, James A. Johnson, William G. Spears, Mary O. Mundinger, William W. McGuire and Stephen J. Hemsley are hereinafter referred to as the “Individual Defendants.”

20. All of the Individual Defendants were *de facto* fiduciaries of the Plan as a result of their discretionary authority or control over the Plan under the very broad definition of “fiduciary” set forth in ERISA at § 3(21)(A), 29 U.S.C. § 1002(21)(A). A person or entity is a fiduciary even if the Plan does not name him as such or by its terms assign fiduciary duties to him where, by his conduct, he engages in fiduciary activities. Those who have discretion over management of the Plan or the Plan’s assets are fiduciaries regardless of the labels or duties assigned to them by the language of the Plan. Moreover, in order to fulfill the express remedial purpose of ERISA, the definition of “fiduciary” is to be construed broadly.

CLASS ACTION ALLEGATIONS

21. Plaintiff brings this action in part as a class action pursuant to Rules 23(a) and (b)(1) and (3) of the Federal Rules of Civil Procedure on behalf of a class consisting of all Participants in the Plan for whose individual accounts the Plan purchased and/or held shares of UnitedHealth common stock (whether in the form of shares of common stock or units of the UnitedHealth Group Stock Fund) at any time during the Class Period (i.e., between December 21, 2005 and May 24, 2006, both dates inclusive).

22. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to plaintiff at this time and

can only be ascertained through appropriate discovery, plaintiff believes there are, at a minimum, thousands of members of the Class in that UnitedHealth's public statements represent that it had tens of thousands of employees in the United States during the Class Period, and a substantial number of these employees were Participants in the Plan for whose account the Plan held UnitedHealth securities. Public filings indicate that there were over 40,000 Participants in the Plan at time relevant to this Complaint.

23. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

- a. whether defendants were fiduciaries of the Plan and/or the Participants;
- b. whether defendants breached their fiduciary duties;
- c. whether the Plan and the Participants were injured by such breaches; and
- d. whether the Class is entitled to damages and injunctive relief.

24. Plaintiff's claims are typical of the claims of the members of the Class, as plaintiff and members of the Class sustained injury arising out of Defendants' wrongful conduct in breaching their fiduciary duties and violating ERISA as complained of herein.

25. Plaintiff will fairly and adequately protect the interests of the members of the Class.

26. Plaintiff has retained competent counsel. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

27. Prosecution of separate actions by members of the Class would create a risk of inconsistent adjudications with respect to individual members of the class which would establish incompatible standards of conduct for defendants, or adjudications with respect to individual

members of the class would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

28. A class action is superior to other available methods for the fair and efficient adjudication of the controversy since joinder of all members of the Class is impracticable. Furthermore, because the injury suffered by the individual Class members may be relatively small, the expense and burden of individual litigation makes it impracticable for the Class members individually to redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

DESCRIPTION OF THE PLAN

29. The Plan is an employee benefit Plan within the meaning of ERISA §§ 3(3) and 3(2)(A), 29 U.S.C. §§ 1002(3) and 1002(2)(A).

30. The Plan is a “defined contribution” or “individual account” Plan with the meaning of ERISA § 3(34), 29 U.S.C. § 1002(34), in that the Plan provides for individual accounts for each Participant and for benefits based solely upon the amount contributed to the Participant’s account, and any income, expenses, gains and losses, and any forfeitures of accounts of other Participants which may be allocated to such Participant’s accounts. Consequently, retirement benefits provided by the Plan is based solely on the amounts allocated to each individual’s account.

31. The Plan is a voluntary contribution Plan whereby Participants direct the Plan to purchase investments from among the investment options available in the Plan and allocate them to Participants’ individual accounts.

32. During the Class Period the Plan held a substantial portion of its assets in the form of units of the UnitedHealth Group Stock Fund. Although new investments in the UnitedHealth Group Stock Fund were not permitted during the Class Period (or at least during a substantial portion of the Class Period) Participants who held units of the UnitedHealth Group Stock Fund were not timely advised of the true state of affairs at the Company, which has now subjected the Company to management turmoil, governmental investigations and civil litigation. Participants have thus been deprived of the opportunity to make informed judgments about their retirement savings.

33. In fact, the Company has effectively prevented many Participants from diversifying out of Company stock by informing Participants that “[o]nce you’ve transferred money out of the UnitedHealth Group Stock Fund, you cannot transfer it back into the fund at a later date.” Summary Plan Description, January 1, 2006, at page 17. This coercive statement has, together with the concealment of the unlawful practices complained of herein, resulted in Participants maintaining more of their retirement savings in Company stock than would have been the case had the truth been told.

34. UnitedHealth is the Sponsor and Administrator of the Plan within the meaning of ERISA § 3(16)(B), 29 U.S.C. § 1002(16)(B). Each of the Individual Defendants were either named or *de facto* fiduciaries of the Plan as the result of discretionary authority and control which these persons had over the management and administrator of the Plan and the assets of the Plan.

DEFENDANTS BREACHED THEIR FIDUCIARY DUTIES

35. Pursuant to ERISA § 404, fiduciaries have a duty to discharge their duties with respect to the Plan prudently and solely in the interest of Participants and Beneficiaries and for the exclusive purpose of providing benefits to Participants and their Beneficiaries. A fiduciary’s duties

of loyalty and prudence also entail a duty to conduct an independent investigation into, and to continually monitor, the merits of the investment alternatives in the Plan, including employer securities, to ensure that each investment is a suitable and proper option for the Plan. The selection, monitoring and continuation of the investment alternatives under the Plan were subject to the above-described fiduciary duties.

36. Pursuant to ERISA § 404(a), 29 U.S.C. § 1104(a), the Plan's fiduciaries had a duty to discharge their duties with respect to the Plan with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and of like character and of like aims, and to diversify investment in the Plan so as to minimize the risk of large losses.

37. Pursuant to ERISA § 409(a), 29 U.S.C. § 110(a), any fiduciary who breaches any of the responsibilities, obligations or duties imposed by ERISA § 404 shall be personally liable to make good to the Plan any losses to the Plan resulting from each breach and shall be subject to such other equitable and remedial relief as the court may deem appropriate.

38. Companies typically provide two types of pensions Plan: (a) a "defined benefit" plan where the amount of an employee's retirement benefit is a direct obligation of the company which is a set amount (typically based on salary while employed and number of year of employment); and (b) a "defined contribution" plan, such as a 401(k) plan, where the retirement benefit is based solely on the amount invested and the earnings made in an employee's plan account. Fiduciaries of defined benefit Plan, who invest or actively supervise the investment of plan assets, are liable under ERISA for imprudent investments made by the plan, and they are liable for and must make good to the plan any losses suffered by the plan and any loss of benefits suffered by beneficiaries as a result of

imprudent investments. Fiduciaries of defined contribution Plan are similarly liable under ERISA § 404(a), 29 U.S.C. § 1104(a), for imprudent investments made by a plan, even where the investment choice is selected by the participant, unless the plan and the fiduciaries comply with the strict requirements of ERISA § 404(c), 29 U.S.C. § 1104(c). Where the plan and fiduciaries do not comply with section 404(c), then the fiduciaries' liability for imprudent investments is the same as the liability of a fiduciary of a traditional pension plan.

39. Fiduciaries can shift liability for imprudent investments to fiduciaries under Section 404c only if they meet four specific requirements:

- a) they disclose in advance the intent to shift liability to Participants;
- b) they ensure that Participants are not subject to undue influence;
- c) they disclose to Participants all material information necessary for Participants to make investment decisions that they are not precluded from disclosing under other applicable law. In this regard, fiduciaries have a choice – they can disclose all material information to Participants, including information that they are not required to disclose under the securities laws, and shift liability to Participants, or they can comply with the more limited disclosure requirement under the securities laws but remain liable for imprudent investments. 29 C.F.R. § 2550.404c-1(b)(2)(i)(B)(i) and (ii) and (c)(2)(i) and (ii).

40. Defendants failed to shift liability to Participants for imprudent investment decisions under section 404(c) for three reasons as alleged in Claim 1 below; (i) they failed to disclose in a fiduciary capacity all material information that they were not precluded from disclosing under other

applicable law and which was necessary for Participants to make informed investment decisions; (ii) they failed to provide an adequate description of the investment objectives and risk and return characteristics of the Funds; and (iii) they failed to ensure that Participants were not subject to undue influence, and indeed they subjected Participants to undue influence, including by informing the Participants, in the January 1, 2006 SPD and elsewhere, that if they diversify out of the UnitedHealth Group Stock Fund they could not get back in.

SUBSTANTIVE ALLEGATIONS

41. A stock option granted to an employee of a corporation allows the employee to purchase company stock at a specified price (referred to as the “exercise price”) for a specified period of time. Stock options are granted as part of employee compensation packages as a means to create incentives to boost profitability and stock value. As Defendant McGuire observed in an interview published in the online version of Forbes on May 1, 2006, stock options are funded by “shareholder dollars.”

42. When the employee exercises the option, he or she purchases the stock from the company at the exercise price, regardless of the stock’s price at the time the option is exercised. If the exercise price is lower than it should be, the employee pays less and the company gets less when the stock option is exercised.

43. Between 1997 and mid-2002, UnitedHealth granted stock options for the purchase of millions of shares of the Company’s common stock to Defendants McGuire and Hemsley.

44. Many companies make their stock option grants at the same time each year, a policy that eliminates the potential for surreptitious back-dating. In fact, UnitedHealth’s Non-Employee Director Stock Option Plan includes just such a precautionary provision:

Each eligible director in the Company in office on the first business day immediately following each annual meeting of the Company's shareholders (the "Annual Option Grant Date") held during the term of the Plan shall be granted automatically on the Annual Option Grant Date an option to purchase 4,000 shares of Common Stock.

45. However, the employment agreements with Defendants McGuire and Hemsley contained no such safeguards. These floating grant dates were unusual and made the backdating described herein possible.

46. Moreover, McGuire's employment agreement gave him control over the grant dates.

47. Defendant McGuire's employment agreement provided that "[t]he Annual Options shall be granted on such date or dates as Executive requests by oral notification to the Chair of the Compensation Committee (with such notifications confirmed promptly in writing)."

48. In public filings with the Securities and Exchange Commission, including in shareholder-approved stock option plans and in certain employment agreements, UnitedHealth contracted and represented that the exercise price of all the stock options would be no less than the fair market value of UnitedHealth's common stock, as measured by the publicly traded closing price for UnitedHealth stock on the day of the grant.

49. Despite this representation, from 1997 to 2006 the annual stock option grants to Defendants McGuire and Hemsley were consistently correlated to a day on or near the day UnitedHealth stock hit its low price for the year, or directly in advance of sharp increases in the price of UnitedHealth stock. For example:

a. UnitedHealth made two stock option grants to McGuire in 1997: a grant of 200,000 options purportedly on February 11, 1997 and a grant of 250,000 options purportedly on October 27, 1997. On February 11, 1997, UnitedHealth stock closed at a price of \$46.875 per share.

(2) February 11, 1997 immediately preceded a sharp rise in UnitedHealth common stock. On October 27, 1997, UnitedHealth stock closed at a price of \$43.06, the single lowest closing price for the year. UnitedHealth stock traded in a range from a low of \$43.06 to a high of \$60.00 during 1997.

b. UnitedHealth made two stock option grants to McGuire in 1998: a grant of 250,000 options purportedly on January 20, 1998 and a grant of 240,000 options purportedly on October 16, 1998. On January 20, 1998, UnitedHealth stock closed at a price of \$47.9375. January 20, 1998 immediately preceded a sharp rise in the price of UnitedHealth stock. UnitedHealth stock traded in a range from a low of \$31.31 to a high of \$72.75 during 1998.

c. UnitedHealth made three stock option grants to Hemsley in 1998: a grant of 60,000 options purportedly on February 6, 1998, a grant of 100,000 options purported on August 17, 1998, and a grant of 120,000 options purportedly on October 16, 1998. On February 6, 1998, UnitedHealth closed at a price of \$52.25. February 6, 1998 immediately preceded a sharp rise in the price of UnitedHealth stock. On August 17, 1998, UnitedHealth stock closed at a price of \$31.94, coming near the bottom of a share price decline and the day after the single lowest closing price of the year. UnitedHealth stock traded in a range from a low of \$31.31 to a high of \$72.75 during 1998. October 16, 1998 immediately precipitated a sharp rise in the price of UnitedHealth stock.

d. UnitedHealth made four stock option grants to McGuire in 1999: a grant of 250,000 options purportedly on February 17, 1999 and three separate grants totaling 1,825,000 options purportedly on October 13, 1999. On February 17, 1999, UnitedHealth stock closed at a price of \$46.81. February 17, 1999 immediately preceded a sharp rise in UnitedHealth stock. On

October 13, 1999, UnitedHealth stock closed at a price of \$40.13, the single lowest closing price for the year. UnitedHealth stock traded in a range from a low of \$31.31 to a high of \$69.75 during 1999.

e. UnitedHealth made three stock option grants to Hemsley in 1999: a grant of 100,000 options purportedly on February 17, 1999 and two separate grants totaling 910,000 options purported on October 13, 1999. On February 17, 1999, UnitedHealth stock closed at a price of \$46.81. February 17, 1999 immediately preceded a sharp rise in UnitedHealth stock. On October 13, 1999, UnitedHealth stock closed at a price of \$40.13, *the single lowest closing price for the year*. UnitedHealth stock traded in a range from a low of \$31.31 to a high of \$69.75 during 1999.

f. UnitedHealth made one stock option grant to McGuire in 2000: a grant of 650,000 options purportedly on March 8, 2000. On March 8, 2000, UnitedHealth stock closed at \$47.63, the single lowest closing price for the year. UnitedHealth stock traded in a range from a low of \$47.63 to a high of \$120.87 during 2000.

g. UnitedHealth made one stock option grant to Hemsley in 2000; a grant of 300,000 options purportedly on March 8, 2000. On March 8, 2000, UnitedHealth stock closed at \$47.63, the single lowest closing price for the year. UnitedHealth stock traded in a range from a low of \$47.63 to a high of \$120.87 during 2000.

h. UnitedHealth made one stock option grant to McGuire in 2001: a grant of 650,000 options purportedly on January 17, 2001. On January 17, 2001, UnitedHealth stock closed at \$52.69, near the bottom of a sharp stock dip in the price of UnitedHealth common stock, and preceding a sharp price increase. UnitedHealth stock traded in a range from a low of \$51.566 to a high of \$72.19 during 2000.

i. UnitedHealth made one stock option grant to Hemsley in 2001: a grant of

650,000 options purportedly on January 17, 2001. On January 17, 2001, United Health stock closed at \$52.69, near the bottom of a sharp stock dip in the price of UnitedHealth common stock, and preceding a sharp price increase. UnitedHealth stock traded in a range from a low of \$51.566 to a high of \$72.19 during 2000.

j. UnitedHealth made one stock option grant to McGuire in 2002: a grant of 650,000 options purportedly on January 7, 2002. On January 7, 2002, United Health stock closed at \$69.55. January 7, 2002 preceded a sharp increase in the price of UnitedHealth stock. UnitedHealth stock traded in a range from a low of \$68.13 to a high of \$100.37 in 2002.

k. UnitedHealth made stock grants to Hemsley in 2001: a grant of 300,000 options purportedly on January 7, 2002. On January 7, 2002, UnitedHealth stock closed at \$69.55. January 7, 2002 preceded a sharp increase in the price of UnitedHealth stock. UnitedHealth stock traded in a range from a low of \$68.13 to a high of \$100.37 in 2002.

l. The only possible explanation for the strong correlation between the grant date of the options and the low share price of UnitedHealth stock is that the exercise price for the options granted the Individual Defendants was determined after the fact and keyed to a day on or near the day when UnitedHealth stock hit its low price for the year, or directly in advance of sharp increases in the price of UnitedHealth stock.

50. As such, the date upon which the Options were granted was determined in a fashion designed to ensure that the Individual Defendants were able to profit off the fluctuations in UnitedHealth stock, with the benefit of hindsight.

51. Any other explanation is statistically impossible. Indeed, a March 18, 2006 Wall Street Journal analyzing twelve stock option grants to Defendant McGuire noted the statistical odds of such an occurrence happening randomly was at least one in 200 million.

52. Therefore, UnitedHealth's repeated representations to the Participants that the exercise price of all the stock options would be no less than the fair market value of UnitedHealth's common stock, measured by the publicly traded closing price for UnitedHealth stock on the day of the grant, were false.

53. Defendants McGuire and Hemsley profited handsomely from UnitedHealth's backdating of stock options.

54. Between 1997 and the present, McGuire has profited by at least \$430,888,274 through the exercise of options and the sale of the stock acquired thereby. These transactions are detailed below:

Date		Action	Shares	Dollar Price From	Dollar Price to	Market Value	Profit
4/3/98		Option Exercise	290K	\$3.78		1,096,490	
4/3/98		Sale	290K	\$68.3930		19,833,970	\$18,737,480
10/31/00		Option Exercise	200K	\$10.1250	\$10.7190	2,143,800	
10/31/00		Sale	200K	\$111.108		22,221,600	\$20,077,800
11/1/00	11/3/00	Option Exercise	300K	\$10.71	\$23.3750	7,012,500	
11/1/00	11/3/00	Sale	300K	\$106.125	\$106.133	31,839,900	\$24,827,400
12/11/01		Option Exercise	920 K	\$11.69	\$18.94	17,424,800	
12/11/01		Sale	920 K	\$70.00		64,400,000	\$46,975,200
7/30/03		Option Exercise	\$1.9 million	\$8.438	\$10.00	19,000,000	
7/30/03		Private Sale	\$1.9 million	\$53.13		100,947,000	\$81,947,000

Date		Action	Shares	Dollar Price From	Dollar Price to	Market Value	Profit
11/30/04		Option Exercise	\$1.654 million	\$10.766	\$11.7190	19,382,895	
11/30/04		Private Sale	\$1.654 million	\$80.60		133,312,400	\$113,929,504
2/23/06		Option Exercise	\$2.3 million	\$5.00	\$5.016	11,536,110	
2/23/06		Sale	\$2.3 million	\$59.10		135,930,000	\$124,393,890

55. Hemsley has profited by at least \$106,584 through the exercise of options and the sale of the stock acquired thereby. These transactions are detailed below:

Trans. Date	Action	Shares	Dollar Price From	Dollar Price to	Market Value	Profit
12/11/01	Option Exercised	350 K	\$15.97	\$21.53	7,353,500	
12/11/01	Sale	350 K	\$70.00		24,500,000	\$16,964,500
7/30/03	Option Exercised	800 K	\$7.9840	\$10.03	8,025,040	
7/30/03	Private Sale	800 K	\$53.13		42,504,000	\$34,478,960
11/30/04	Option Exercised	800 K	\$10.031		8,025,040	
11/30/04	Private Sale	800 K	\$80.60		\$64,480,000	\$56,454,960.00

56. The practice of backdating stock options not only enriched Defendants McGuire and Hemsley, but also resulted in the overstatement of UnitedHealth's profits between 1997 and at least 2002. This is because options priced below the stock's fair market value when they are awarded bring the recipient an instant paper gain. Under accounting rules, that is the equivalent of additional compensation and must be treated as a cost to the company.

57. Moreover, UnitedHealth may owe large amounts in back taxes to the Internal Revenue Service. Tax rules allow companies to deduct from their corporate filings executives' gains from exercised stocks, because the IRS views the option profit as comparable to extra compensation paid to employees. However, that only applies to options granted at the price on the day it was issued, or the day before. Options backdated to a day with a lower market price do not qualify for a deduction of gains from the CEO or the next four highest-compensated executives.

58. UnitedHealth did not account for the amount by which the market price of UnitedHealth stock exceeded the exercise price of the options. Thus, the practice of backdating options caused UnitedHealth to overstate its profits.

59. Defendants apparently ceased backdating their options in 2002, when changes to the federal securities laws curtailed the potential for backdating by requiring companies to disclose option grants within two days.

60. Throughout the Class Period, Defendants issued communications to the Participants (either directly or indirectly through statements in SEC filings which was incorporated into communications to Participants) which failed to inform the Participants concerning the back-dated of the stock option grants to senior executives and the other improper, inappropriate and unlawful conduct alleged herein. These false and misleading communications to the Participants included the company's annual and quarterly reports, proxy statements to shareholders during this time period and SPDs and other reports to the Participants which incorporated these SEC's filings.

THE TRUTH BEGINS TO BE REVEALED

61. On March 18, 2006, The Wall Street Journal published an analysis of stock options granted to chief executives of several companies, including UnitedHealth, which revealed for the

first time that the option grants detailed herein were backdated. UnitedHealth responded to this by claiming the process by which its grants were awarded was “appropriate.”

62. On April 7, 2006, UnitedHealth revealed that it had received an inquiry from the United States Securities and Exchange Commission concerning the practices detailed herein and had appointed a committee of independent directors to review its stock-option grant practices in light of this inquiry.

63. As the market absorbed this news, the price of UnitedHealth securities slid downwards from a \$54.51 close on April 6, 2001 to a \$51.55 close on April 11, 2006.

64. Under fire from investors and the financial press, UnitedHealth issued a press release on April 26, 2006 announcing the “adoption of a number of significant changes in the company’s corporate governance policies.” These changes included, among other things, a promise to “review overall levels of equity-based compensation; performance criteria for equity grants; vesting policies; and level of director compensation.”

65. On May 11, 2006 the Company filed with the SEC its quarterly report for the quarter ended March 31, 2006. The Company therein admitted that there had been “significant deficiencies” in its executive stock option practices that would likely result in the restatement of previously issued financial statements, the elimination of hundreds of millions of dollars in previously-reported profits and other adverse consequences. The May 11, 2006 quarterly report stated, among other things,

“In March 2006, the Company initiated separate independent and internal reviews of its stock option granting practices from 1991 to the present. The reviews encompass all option grants made under the Company’s various stock option plans in effect during this period...[T]he review is continuing and upon its conclusion, the Company may be required to record additional charges for stock-based compensation expense. Any such charges could be material and, in such event, require restatement of the Company’s previously

filed financial statements. The Company may also be required to pay additional taxes for compensation associated with certain stock options which were previously exercised and may not be able to take additional deductions associated with certain stock options in future periods.”

* * *

“The Company has identified a significant deficiency in its controls relating to stock option plan administration and accounting for and disclosure of stock option grants.”

* * *

“The Securities and Exchange Commission is conducting an informal inquiry into the Company’s stock option granting practices and has been advised by the Company of the appointment of the Special Committee and counsel. At the conclusion of the Company’s independent review and the Securities and Exchange Commission’s informal inquiry, the Company could be subject to regulatory fines or penalties or other contingent liabilities.”

66. On May 11, 2006, the *Associated Press* published a story entitled “UnitedHealth may have to restate results due to option.” The story stated in part:

“UnitedHealth Group Inc. admitted a “significant deficiency” in its handling of stock options on Thursday and said it may have to restate several years of earnings.

It was a stunning turnaround for the nation’s second-largest health insurer, which had maintained that it handled options granted to Chairman and CEO William McGuire and other executives appropriately. Its shares slid \$1.80, or 3.9 percent, to close at \$44.37 on the New York Stock Exchange, off from a recent high of almost \$64 in December.

The UnitedHealth filing with the Securities and Exchange Commission said the SEC is conducting an “informal inquiry” of the company’s options-granting practices, and said it could lose tax deductions for options grants it previously thought were deductible.

UnitedHealth said it is conducting separate reviews of its options-granting practices one by a committee of its board of directors, and one by the company itself.

It said it does not believe the company review will result in material adjustments to its earlier financial statements. But if restatements are needed, UnitedHealth said they could slice as much as \$286 million from its total earnings for 2003, 2004, and 2005. Of that, \$150 million is from 2005.....”

67. On May 17, 2006, the Company announced that it had received a subpoena from the office of the United States Attorney for the Southern District of New York requesting documents from 1999 to the present relating to the granting of stock options. The Company also announced it had received a request from the IRS for documents from 2003 to present relating to stock options and other compensation for executive officers of the Company.

68. On May 24, 2006 the closing market price of the Company’s common stock was less than \$42.00 per share, a significant decrease from the Company’s market price before the market learned about the Company’s inappropriate executive stock options practices.

69. The Company continues to be damaged by the executive stock option scandal, and the value of the Company’s common stock and units of the UnitedHealth Group Stock Fund continues to be adversely. On August 30, 2006, Fitch Ratings announced that it had placed all ratings of Company’s debt on “Rating Watch Negative.” Fitch reported that its action was based upon “uncertainty resulting from two primary issues that have surfaced at UNH over the past several months.” One issued was identified has a notice of default which the Company had received from certain debt security holders. The second identified issue was the executive stock options scandal at UnitedHealth:

Also, beginning with its proxy statement filed on April 7, 2006, UNH disclosed that it has faced increased scrutiny into its stock option granting practices, which are currently being reviewed by an Independent Committee of the company’s Board of Directors and by several regulators, including the SEC. Although Fitch does not expect these reviews to have a material affect on UNH’s finances, one

area of concern to Fitch is the possibility that the reviews could result in disruption at the senior management level of the company, which could adversely affect the company's longer-term outlook.

70. Fitch was prescient. A law firm, Wilmer Cutler, recently concluded an investigation of the Company's executive stock option practices and found long standing misconduct. The wrongdoing uncovered by the Wilmer Cutler investigation has recently been the subject of numerous news reports including the following.

71. On October 14 - 15, 2006 the *Wall Street Journal* reported, under the title "McGuire Faces Pressure to Leave At UnitedHealth – Probe Finds Some Evidence Options Were Manipulated; Board Plan to Meet Sunday":

"William McGuire, chairman and chief executive of UnitedHealth Group Inc., faces mounting boardroom pressure to leave the giant health insurer after an internal probe found evidence that stock options were improperly manipulated to benefit insiders, people familiar with the matter said.

Dr. McGuire's fate, along with that of general counsel David Lubben, could be decided at a board meeting scheduled to take place Sunday, these people said.

Directors received a detailed briefing on the results of the months-long internal probe on Friday in Washington. The probe was conducted by law firm WilmerHale LLP. The meeting included a lengthy presentation by Dr. McGuire and his attorney.

UnitedHealth, one of the nation's largest health insurers with market value of \$67 billion, is among the most prominent of the more than 100 companies caught up in the stock-options scandal. Dr. McGuire has been among the highest-paid executives in U.S. corporate history, amassing an enormous, options-based fortune over his 15 years running UnitedHealth. At the end of 2005, his unexercised cache of options was worth \$1.78 billion, far and away the largest sum held by any U.S. executive, according to Standard & Poor's ExecuComp.

Also at risk are several directors on UnitedHealth's 12-member board who served on its compensation committee during the period when the improperly dated grants were awarded, the people familiar with the situation said. Some past compensation-committee members include former New Jersey Gov. Thomas H. Kean, New York

money-manager William Spears and Columbia University nursing-school dean Mary Mundinger.

* * *

Dr. McGuire benefited handsomely from the munificence of the UnitedHealth board's compensation committee, which—in addition to the options—granted him generous salaries and bonuses and a hefty retirement deal. “We’re so lucky to have Bill,” Ms. Mundinger, a longtime compensation-committee member, told the Journal earlier this year. Of his rising pay, she said: “He needs to be compensated appropriately so that his business model has believability in the market.”

The largest grant Dr. McGuire received came in 1999, entitling him to purchase 1.825 million shares of the company's stock. Adjusted for several splits that have occurred since then, it is equivalent to 14.6 million shares. He so far has exercised only about 5% of the options, and his profit on the shares remaining would be about \$600 million if cashed in today.

But the grant's timing, in October if that year, raises eyebrows: It was dated at the stock's lowest point all year.

In March, Mr. Spears, the UnitedHealth director, told the Journal that the 1999 grant wasn't backdated to that propitious time. Rather, he said, the low price encouraged directors and Dr. McGuire to wrap up negotiations.”

72. On October 16, 2006 the *St Paul Pioneer Press* reported, under the title “Stock Scandal Claims McGuire”:

“William McGuire, who built a fortune guiding the meteoric rise of UnitedHealth Group, is leaving the company after an independent review found evidence that millions of stock options had been backdated.

* * *

The dramatic shakeup follows an inquiry by outside counsel into 29 major option grants involving millions of shares of stock made to employees between 1994 and 2006. The inquiry concluded many were likely backdated, including a grant of 1 million shares to McGuire and 500,000 to Hemsley in 1999.

* * *

UnitedHealth's internal controls related to its stock-options program were inadequate and senior management failed to ensure the option-granting practices were appropriate, the inquiry found.

The report notes that McGuire, who played a key role in large grants made to top executives, denied that his action amounted to backdating. But the inquiry concluded that his statements conflicted with e-mails and other written documents reviewed by investigators.

The inquiry also found no evidence that a financial relationship between McGuire and William Spears, a board member, had been properly disclosed. Spears also resigned Sunday.

* * *

Through a series of acquisitions, McGuire built the company into one of the state's largest public companies, with a market value of \$70 billion, just before the controversy erupted last spring. Since then, the company's stock price has taken a pounding, dropping its market value by \$10 billion.

* * *

UnitedHealth faces further scrutiny from regulators and several shareholder lawsuits.”

73. On October 16, 2006 the *StarTribune.com* reported, under the title “McGuire Linked to Compensation Committee Member”:

“The investigation into UnitedHealth Group Incorporated's backdated stock options to Chief Executive William McGuire has dominated news about the company for most of this year.

But an outside law firm's investigation of the company also found a more fundamental issue below the surface: McGuire and a key member of the compensation committee that awarded his stock-option grants had a serious conflict of interest. That relationship appears to have been in violation of New York Stock Exchange rules, and the revelation of its details this past week most likely contributed to McGuire's sudden decision over the weekend to retire.

According to the law firm's report, UnitedHealth board member William Spears managed assets for McGuire and served as trustee of two trusts for McGuire's children.

The amount of assets involved fluctuated from \$15 million in 1996 to more than \$55 million in 2006. In addition, McGuire invested \$500,000 in Spears' money-management firm. McGuire unwound that investment by early 2003.

During much of that time, Spears had a direct say over how much McGuire was paid as CEO. In 1999, Spears was appointed chairman of the ad-hoc board committee that negotiated an employment agreement with McGuire.

Spears also managed money for UnitedHealth President Stephen Hemsley, who has been named McGuire's successor. According to the law firm's report, Spears' firm began to manage funds for Hemsley starting in late 2001, with the amount of assets managed fluctuating from \$11.7 million to more than \$52 million in 2006.

The unusual ties between McGuire and Spears were not disclosed to investors.

* * *

Corporate governance experts said Monday that the relationship between McGuire and Spears was an obvious conflict of interest that could have played a role in the decisions that members of the compensation committee made in granting McGuire hefty stock options.

Particularly unsettling, they said, is the claim by board members that they were not aware of the money-management relationship. No director on the UnitedHealth board recalls being told of the relationship or of McGuire's investment in Spears' firm before the 1999 employment negotiations, according to the report.

"It doesn't appear that there was a process in place to collect, identify and properly review conflicts of interest" at UnitedHealth, said Roy Snell chief executive of the Society of Corporate Compliance and Ethics in Minneapolis.

It does appear, however, that UnitedHealth's general counsel, David Lubben, may have been aware of the conflict involving McGuire and Spears. In 1999, Lubben sent an e-mail to an outside counsel generally outlining the relationship between the two executives and indicating that disclosure of some "conflict" had been made to the "full" board, according to the report.

However, there are no meeting minutes or documentation to confirm that such a disclosure took place, according to the report. "Two directors were adamant that they believe they would have remembered had they been told earlier of or had been aware of such relationships between McGuire and Spears," the report says.

Lubben stepped down as general counsel Sunday.

The lack of documentation is surprising, given the stricter corporate governance rules put in place after the stock market scandals of 2001 and 2002, said James Tompkins, director of board advisory services at the Corporate Governance Center at Kennesaw State University, near Atlanta.

“I don’t think that a lot of people would argue that it’s not a conflict of interest for a board member to manage \$50 million for a CEO,” Tompkins said. “It seems like some basic checks and balances were not in place.”

74. On October 16, 2006 the *Wall Street Journal* reported, under the title “CEO to Leave Under Pressure At UnitedHealth – Hemsley to Succeed McGuire As Options Scandal Claims Highest-Profile Casualty Yet”:

“UnitedHealth Group Inc. Chairman and Chief Executive William McGuire agreed to step down from both posts at the giant health insurer after an outside law firm’s probe found evidence that he was closely involved in the issuance of millions of backdated stock options that benefited himself and other employees.

David Lubben, UnitedHealth’s general counsel, also is leaving the company, and William G. Spears, a New York money manager, resigned as a member of the board of directors.

The investigation by the law firm of Wilmer Cutler Pickering Hale & Dorr, found that Dr. McGuire and Mr. Spears had financial entanglements during the time that Mr. Spears was head of UnitedHealth’s compensation committee.

Dr. McGuire and Messrs. Spears and Lubben couldn’t be reached for comment.”

* * *

Year after year during his tenure at the helm of UnitedHealth, Dr. McGuire received giant option grants. In many of those years, the purported dates were suspiciously favorable. Between 1994 and 2002, he received 12 grants, each dated just before a sharp rise in the company’s share price. Three grants—in 1997, 1999 and 2000—were dated on the day of the stock’s lowest closing price of the year.

A *Wall Street Journal* analysis published in March found that the odds were infinitesimal—less than one in 200 million—that such a fortunate pattern of dates would occur if the dates were chosen at random. The company said at the time that its granting process was “appropriate.” The report from the outside lawyers leading

the company's probe said their investigation and other investigations by government officials followed publication of the Journal article.

The Wilmer Cutler report says that Dr. McGuire insisted that the options grant dates weren't selected after the fact but cast doubt on the credibility of his assertions.

UnitedHealth has already disclosed that it may restate its financial results to fix its accounting for options—a typical step undertaken to remedy improper backdating.”

75. On October 16, 2006 the *New York Times* reported, under the title “Chief Executive at Health Insurer Is Forced Out in Options Inquiry”:

“Dr. William W. McGuire, a medical entrepreneur who built the UnitedHealth Group into a colossus in its field, was forced to resign from the company yesterday and to give up a portion of the \$1.1 billion he holds in harshly criticized stock options.

UnitedHealth, one of the nation's two largest health insurers, also dismissed its general counsel and a member of its board in what amounted to a sweeping overhaul of its governance practices and leadership ranks. The options that Dr. McGuire had been granted over the years have led to criminal and civil investigations and public disapproval.

* * *

At UnitedHealth, there was significant evidence that options were backdated for employees at all levels of the company between 1994 and 2002. But among the most substantial and egregious, according to the law firm's report, were those awarded to Dr. McGuire, the company's long time chairman and chief executive. Of the 12 options grants issued to Dr. McGuire, three just happened to be priced at the stock's lowest price that year.

The Justice Department, the Minnesota Attorney General's office, the Securities and Exchange Commission and the Internal Revenue Service are all investigating UnitedHealth's options practices.

* * *

In a lengthy and somewhat contrite statement after a board meeting yesterday, UnitedHealth announced that it would take a series of steps recommended by an outside law firm, Wilmer Cutler Pickering Hale & Dorr, which had been hired by a special committee of UnitedHealth directors. The seven-month investigation led to

a showdown that ended late yesterday after Dr. McGuire and the UnitedHealth board was presented with the findings.

In their report, investigators from Wilmer Cutler found that “most of the 29 stock grants” that accounted for nearly 450 million stock options that the company awarded between 1994 and 2002 “were likely backdated.”

The report also found that a grant of one million stock options to Dr. McGuire and 500,000 options awarded to Mr. Hemsley in connection with their 1999 employment contract were probably backdated. But the company’s outside investigators appeared to clear Mr. Hemsley, finding that he “had little or no role in the negotiation of, or the process leading up to, the option award” related to the contract.

Investigators, moreover, painted a picture of “inadequate” internal controls and a senior management team that failed to set an appropriate tone at the top. But the report attempted to clear the directors on the compensation committee of any legal wrongdoing. “The directors were entitled to presume that matters brought before them for action were procedurally proper and consistent with applicable legal and accounting standards,” the report concludes.

The report also said that the financial relationships between Dr. McGuire and the board member who resigned yesterday, William G. Spears, who headed the board’s compensation committee when Dr. McGuire’s employment agreement was negotiated in 1999, “created a conflict of interest.” Mr. Spears served as a trustee for two trusts for Dr. McGuire’s children and managed as much as \$55 million of Dr. McGuire’s money. He also managed millions of dollars for Mr. Hemsley.

Acting on the law firm’s recommendations, the board said it would replace, within three years, all of the directors on its compensation committee who had approved the improper options. The company also said it would create new senior executive posts to oversee ethics and compensation.

* * *

Most analysts have continued to recommend the stock during its slide, but Matthew Borsch, who follows UnitedHealth at Goldman Sachs, predicted that United’s share price “will fall further now with the certainty of Dr. McGuire’s departure.”

Ms. Skolnick or CRT Capital Group had other concerns. She said the changes announced yesterday were “good” but added that “the scary thing” was the possibility that past stock-dating practices may still lead to costly penalties. “I worry that something bad must have happened,” she said.”

76. On October 17, 2006 the *New York Times* reported, under the title “Old Options Still

Haunt An Insurer”:

“When Stephen J. Hemsley joined UnitedHealth Group after 23 years with the accounting firm Arthur Andersen, he was greeted with a grant of 400,000 stock options dated shortly after he started in June 1997.

There was just one thing: the options carried a stock price based on the market price five months earlier, when he did not yet work for UnitedHealth, one of the largest health insurers in the country. The difference in dates effectively created a built-in gain of \$7.26 for every share.

Mr. Hemsley, who was chief financial officer at Andersen, said that he “didn’t recall focusing at the time” that his options carried a discounted price and that there was not enough evidence to determine if the grant was actually backdated.

But the episode, recounted in a 14-page report into UnitedHealth’s option practices, does raise some questions about Mr. Hemsley, who has taken the reins at UnitedHealth from Dr. William W. McGuire, who was forced to resign Sunday amid criticisms of how stock options were awarded.

“That obviously raises credibility issues,” said Patrick McGurn, a corporate governance expert at Institutional Shareholder Services, a proxy advisory firm. “We are seeing a lot of modified Sergeant Schultz defenses here,” he said, referring to a character in the 1960’s television series “Hogan Heroes.” “They are not claiming to know nothing, but only part of what went on.”

Mr. Hemsley has not been accused of any wrongdoing.

And the investigation by an outside law firm, Wilmer Cutler Pickering Hale & Dorr, that was commissioned by UnitedHealth largely exonerates Mr. Hemsley, accepting his word that he never focused on his stock option grants and that had “he had little or no role” in the negotiation and authorization of a subsequent stock option megagrant.

UnitedHealth declined to make Mr. Hemsley available for comment. His lawyer did not return calls seeking comment.”

* * *

“The report also raises questions about his [Hemsley’s] judgment in managing potential conflicts. Investigators detail that Dr. McGuire had extensive financial

dealings with William Spears, a longtime director and chairman of UnitedHealth's compensation committee when Dr. McGuire's contract was being negotiated. Mr. Spears managed millions of dollars for Dr. McGuire's family and was a trustee for two family trusts.

Mr. Hemsley did not engage Mr. Spears in 1999, when his contract was being negotiated. But he did hire him to manage his money in 2001. And his former employer, Arthur Andersen, which was hired by UnitedHealth's management as its auditor, also served as the compensation consultant advising the board committee negotiating his contract.

In addition, the report found that UnitedHealth had "inadequate internal controls" to prevent option grant manipulation. Investigators suggested poor communication and sloppy paperwork among its accounting, legal and human resources departments led to many of the problems. The report said that new hires and promoted employees were routinely awarded stock options at the lowest closing price between the start and finish of the quarter when an employee began work, and those "practices were followed openly" in the human resources department.

Investigators found that Mr. Hemsley played a "more limited role in the option-granting process." He told investigators "he was unaware of how the grant dates were selected" or other precise terms.

Who did the human resources department ultimately report to? Mr. Hemsley, according to analysts."

77. On October 17, 2006 the *Wall Street Journal* reported, under the title "UnitedHealth's McGuire Could Leave with \$1.1 Billion":

"UnitedHealth Group Inc.'s soon-to-be former chief executive, William McGuire, could walk away from the company with about \$1.1 billion in stock options, retirement payouts and other benefits, according to an examination of securities filings.

Dr. McGuire agreed to leave the CEO post Sunday in the wake of an internal report that found that millions of stock options were improperly backdated at the company during his watch. The lawyers who conducted the report also found that he signed certificates granting backdated options to employees."

* * *

Facing questions in May about the suspicious timing and the enormous size of Dr. McGuire's option grants, UnitedHealth said that the board adopted certain changes, including capping the pension benefits and eliminating many of the perks, such as post-retirement health insurance.

But in its press release Sunday announcing Dr. McGuire's departure, the company said that it was "initiating the process" of dumping the perks, suggesting that it hadn't yet done so.

The internal report that led to Dr. McGuire's departure gave one example of how options could become so lucrative. The report, by the firm of Wilmer Cutler Pickering Hale & Dorr, described an unusual options swap in which Dr. McGuire and others managed to get the same options twice.

In October 1999, the report says, Dr. McGuire suggested in a memo that "employee morale and retention" were being hurt by old options that carried strike prices above the company's then-market price. The board agreed to suspend a total of two million out-of-the-money options and replace them with a similar number of new options, which were priced at the lowest point of the year. The Wilmer report concluded the new options likely were improperly backdated to that low point to give the insiders an extra boost.

By the following August, however, the company's stock price had risen significantly. The board then agreed to reactivate the suspended options. So in effect, Dr. McGuire and the others double-dipped, getting back their original options while also keeping the replacement options.

In Dr. McGuire's case, the Wilmer report found, the maneuver in essence got him an extra 750,000 options, with an instant paper gain of about \$26 million. Those options are now valued at about \$250 million because of share splits and an increased stock price.

The report also concluded that the company failed to properly disclose and account for the complex transaction.

The stock market spent much of the day after the news of Dr. McGuire's departure sorting out what developments at the company meant. UnitedHealth shares rose briefly before closing down 2.48%, or \$1.21, at \$47.54."

78. On October 20, 2006 the *Wall Street Journal* reported, under the title "How Did UnitedHealth's McGuire Get Same Options Twice?":

“Investors and the public heaped scorn on William McGuire this week for his role in apparent stock-options backdating at UnitedHealth Group Inc. But his thorniest legal problems could stem from a 1999 transaction in which backdating played only a minor role.

In the transaction, according to a report prepared by outside lawyers commissioned by UnitedHealth directors, Dr. McGuire and other employees were able to effectively get the same options twice, at favorable prices, while skirting disclosure requirements and potentially violating accounting rules. For Dr. McGuire alone, the extra options are now valued at \$250 million. Just as troublesome for Dr. McGuire, the report concluded that it’s unclear whether directors ever intended to give Dr. McGuire such a generous deal.

Dr. McGuire’s role in implementing the transaction is amply documented. The lawyers probing UnitedHealth found a 1999 memo from Dr. McGuire to directors in which he initiated the arrangement. He also told the investigators that it was structured as it was in part to avoid having to reprice the options, which would have unpleasant accounting consequences, according to a person familiar with the matter. That would cause a drag on earnings. (For an article on the company’s third-quarter earnings, see Page B4).

But UnitedHealth’s outside lawyers believe that the accounting treatment was nonetheless improper. That will likely require UnitedHealth to take substantial charges, and it may expose Dr. McGuire or others to allegations of accounting misdeeds.

Dr. McGuire, the longtime chief executive of UnitedHealth, stepped down as chairman of the giant Minnetonka, Minn.-based insurer Sunday, and he will leave his post as chief executive by Dec. 1. The moves follow an internal investigation by the law firm of Wilmer Cutler Pickering Hale & Dorr, released in a report on Sunday, that found rampant backdating of stock options at the company, and attributed a substantial portion of the blame to Dr. McGuire.

“If I were at the SEC, I think I would have plenty from the Wilmer Hale report that would motivate me to look very hard at Dr. McGuire’s conduct,” said Donald C. Langevoort, a law professor at the Georgetown University Law Center. The 1999 options-swap transaction, he added, “is a perfect example of a major compensation decision not being presented clearly and plainly to the investing public until well after the fact.”

* * *

Legal experts said the Securities and Exchange Commission will want to determine whether directors were, in effect, bamboozled. “To the extent that the commission

decides that Dr. McGuire or anyone else in senior management was not candid with the board and let them operate in the dark, I think the commission could turn that into the basis for an enforcement action,” Prof. Langevoort said.

79. On November 9, 2006 the *Wall Street Journal* reported, under the title “UnitedHealth Executives Forfeit \$390 Million in Options”:

The two top executives of UnitedHealth Group Inc. agreed to forfeit about \$390 million in stock-option compensation, by far the biggest sum returned to a company under scrutiny for backdating options awards.

The giveback was announced at the same time the giant health insurer disavowed more than a decade’s worth of earnings statements.

Last month, an internal inquiry found that the two executives—outgoing Chief Executive William W. McGuire and his successor, Stephen J. Hemsley—received options that carried dates prior to the dates on which they were actually granted, making them more valuable than they otherwise would have been.

Other senior UnitedHealth executives will also return unspecified options gains. Paul Hodgson, senior research associate at Corporate Library, a corporate-governance research group in Portland, Maine, said the \$390 million giveback by Dr. McGuire and Mr. Hemsley may be the largest voluntary forfeiture by corporate executives ever. “This is certainly the biggest that I’m aware of,” he said.

UnitedHealth is one of the largest companies to be ensnared in the options-backdating scandal, in which companies manipulated the dates that option were awarded to provide additional compensation to executives. More than 130 companies are under investigation by the Securities and Exchange Commission, and many of those are also being probed by the Justice Department.

UnitedHealth also disclosed that it would have to take “significantly greater” charges related to its backdated stock options than it had previously estimated and that it expects the charges to affect the past 12 years of previously reported earnings. The Minnetonka, Minn.-based health-insurance giant didn’t specify what the new charges would be. It had previously said it might have to restate up to \$286 million in earnings, stemming from three years’ worth of earnings.

UnitedHealth also said its chief financial officer, Patrick Erlandson, resigned his post and will be succeeded by G. Mike Mikan, the company’s senior vice president of finance. Mr. Erlandson will be reassigned to other “operational duties,” the company

said. A UnitedHealth spokesman declined to say whether Mr. Erlandson's move was related to the stock-options issue.

* * *

UnitedHealth also said it reached a new, four-year employment agreement with Mr. Hemsley that is remarkably spartan compared with his and Dr. McGuire's previous contracts. Under its terms, Mr. Hemsley will receive a base salary of \$1.3 million, \$1 million less than Dr. McGuire earned as CEO. Far from the power Dr. McGuire enjoyed to negotiate and, in some years, set the date of his own option awards. Mr. Hemsley's contract doesn't set any minimum or target level for bonuses or other incentive-linked compensation. Rather, any additional bonuses are "solely at the discretion" of the board's compensation committee, the company reported in a filing with the SEC. "It's unusual for someone to relinquish that much control over how his bonus gets set, Mr. Reda said.

Shares in UnitedHealth fell \$1.57 to \$48 in 4 p.m. composite trading on the New York Stock Exchange."

RESULTING LOSSES TO THE PLAN

80. That the improprieties at the Company in the area of back-dating executive stock option grants is the most egregious impropriety of the many public companies who have been or being investigated is clear. The executive stock option scandal at UnitedHealth has resulted in senior management changes and related distractions, costs and uncertainties; a need to restate the Company's financial statements; additional tax liabilities in amounts not yet determined; regulatory non-compliance (the inability to timely file required report with the SEC); ongoing investigations by the SEC, United States Attorneys, Minnesota regulators and the IRS, and civil suits which may cost the Company hundreds of millions of dollars. The market price of the Company's common stock, and the value of the units of the UnitedHealth Group Stock Fund held by participants, would now be substantially higher, and would have been substantially higher throughout the Class Period, but for the executive stock option scandal at the Company.

CLAIM I

ALL DEFENDANTS NEGLIGENTLY MISREPRESENTED AND NEGLIGENTLY FAILED TO DISCLOSE MATERIAL INFORMATION

81. The allegations of all paragraphs set forth above are specifically realleged and incorporated herein by reference.

82. Pursuant to ERISA § 404, 29 U.S.C. § 1104, defendants have a duty to discharge their duties with respect to the Plan prudently and solely in the interests of Participants and Beneficiaries and for the exclusive purpose of providing benefits to Participants and their Beneficiaries. The duty of the fiduciary includes at least:

- (a) a duty not to misinform;
- (b) a duty to inform when the fiduciary knows or should know that silence might be harmful; and
- (c) a duty to convey complete and accurate information material to the circumstances of participants and beneficiaries.

83. Defendants made repeated misrepresentations and concealed material information as set forth above.

84. Participants in the Plan, relied upon, and are presumed to have relied upon, defendants' misrepresentations and non-disclosures to their detriment.

85. As a consequence of defendants' misrepresentations and non-disclosures, the Plan suffered losses.

86. Defendants are personally liable to make good to the Plan any losses to the Plan resulting from each breach.

87. Each defendant is jointly liable for the acts of the other defendants as a co-fiduciary.

88. Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), the Court should award equitable relief.

CLAIM II

ALL DEFENDANTS IMPRUDENTLY INVESTED PLAN ASSETS IN COMPANY COMMON STOCK

89. The allegations of all paragraphs set forth above are specifically realleged and incorporated herein by reference.

90. Defendants failed to shift liability to Participants for imprudent investment decisions under section 404(c), so defendants remained liable for all imprudent investments in UnitedHealth stock offered in the Plan.

91. Defendants breached their fiduciary duties as alleged above by allowing the Plan to purchase and hold UnitedHealth stock during the Class Period, and by allowing the UnitedHealth stock to remain an investment option under the Plan, because this investment in UnitedHealth stock was an imprudent investment for Plan whose purpose was to provide for employee retirement income security.

92. At all relevant times, defendants were aware or should have been aware of the publicly disclosed misrepresentations, which knowledge would have led a reasonable investment manager to conclude that an investment in UnitedHealth stock was an imprudent, high risk investment for the Participants in the Plan, whose purpose was to provide for employee retirement income security. In particular, defendants should have known that the Company was systematically back-dating stock option grants of senior management, thereby raising serious issues about the

integrity and competence of senior management, legal compliance by the Company and senior management and distorting the Company's financial and operating conditions.

93. Defendants also have known (a) that defendants made the negligent misrepresentations directly to Plan Participants as set forth above; (b) these facts that were negligently never disclosed in a timely manner; and (c) that these negligent misrepresentations and non-disclosures would have a negative effect on the price of the UnitedHealthcare stock and caused the stock to be an imprudent investment.

94. Based on the foregoing, Defendants should have terminated the UnitedHealth Group Stock Fund as an investment option under the Plan or, in the alternative, should have informed, allowed or directed the Participants to diversify out of employer stock to protect their retirement assets.

95. To the extent that the defendants possessed material adverse non-public information, they should have prevented the Participants from purchasing additional UnitedHealthcare stock. They should also have directed the Plan to sell all UnitedHealthcare stock and disclosed this non-public information prior to any sales by the Plan. Had it done so, the Plan would have limited their losses substantially, even though the price might have dropped upon disclosure.

96. Defendants were fiduciaries who breached their fiduciary duties in that they should have known the facts as alleged above and should have known that the Plan should not have permitted the investment in UnitedHealthcare stock.

97. As a consequence of the defendants' breaches, the Participants suffered losses.

98. The defendants are liable to personally make good to the Participant any losses to the Plan resulting from each breach.

99. Each defendant is jointly liable for the acts of the other defendants as a co-fiduciary.

100. Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), the Court should award equitable relief to the Class.

CLAIM III

DEFENDANTS JOHNSON, SPEARS, MUNDINGER, MCGUIRE AND HEMSLEY FAILED TO PROPERLY APPOINT, MONITOR AND/OR INFORM THE NAMED FIDUCIARY (DEFENDANT DAPPER)

101. The allegations of all paragraphs set forth above are specifically reallege and incorporated herein by reference.

102. As alleged above, Defendants were fiduciaries within the mean of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A).

103. As alleged above, the scope of the fiduciary responsibility of Defendants included the responsibility to appoint, evaluate, and monitor other fiduciaries.

104. The duty to monitor entails both giving information to and reviewing the actions of the monitored fiduciaries. In this case, that means that the monitoring fiduciaries, Defendants and the duty to:

- (a) Ensure that the monitored fiduciaries possess the needed credentials and experience, or use qualified advisors and service providers to fulfill their duties. They must be knowledgeable about the operations of the Plan, the goals of the Plan, and the behavior of the Plan's participants;
- (b) Ensure that the monitored fiduciaries are provided with adequate financial resources to do their job;

- (c) Ensure that the monitored fiduciaries have adequate information to do their job of overseeing the Plan's investments;
- (d) Ensure that the monitored fiduciaries have ready access to outside, impartial advisors when needed;
- (e) Ensure that the monitored fiduciaries maintain adequate records of the information on which they base their decisions and analysis with respect to the Plan's investment options; and
- (f) Ensure that the monitored fiduciaries report regularly to the Company and/or the Director Defendants. The Company and/or Director Defendants must then review, understand, and approve the conduct of the hands-on fiduciaries.

105. Under ERISA, a monitoring fiduciary must ensure that the monitored fiduciaries are performing their fiduciary obligations, including those with respect to the investment of the plan assets, and must take prompt and effective action to protect the plan and participants when they are not. In addition, a monitoring fiduciary must provide the monitored fiduciaries with complete and accurate information in their possession that they know or reasonably should know that the monitored fiduciaries must have in order to prudently manage the plan and the plan assets.

106. Defendants breached their fiduciary monitoring duties by, among other things, (a) failing to ensure that the monitored fiduciaries had access to knowledge about UnitedHealthcare's business problems alleged above, which made UnitedHealthcare stock an imprudent retirement investment, and (b) failing to ensure that the monitored fiduciaries completely appreciated the huge risk of significant investment of the retirement savings of rank and file employees in UnitedHealthcare stock, an investment that was imprudent and subject to inevitable and significant

depreciation. Defendants knew or should have known that the fiduciaries they were responsible for monitoring were (i) imprudently allowing the Plan to continue offering the UnitedHealthcare stock as an investment alternative for the Plan, and (ii) continuing to invest the assets of the Plan in UnitedHealthcare stock when it no longer was prudent to do so. Despite this knowledge, defendants failed to take action to protect the Plan, and concomitantly the Plan's participants, from the consequences of these fiduciaries' failures.

107. Defendants, in connection with their monitoring and oversight duties, were required to disclose to the monitored fiduciaries accurate information about the financial condition of UnitedHealthcare that they knew or should have known that these defendants needed to make sufficiently informed decisions. By remaining silent and continuing to conceal such information from the other fiduciaries, these Defendants breached their monitoring duties under the Plan and ERISA.

108. Defendants are liable as co-fiduciaries because they knowingly participated in each other's fiduciary breaches as well as those by the monitored fiduciaries, they enabled the breaches by these defendants, and they failed to make any effort to remedy these breaches, despite having knowledge of them.

109. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plan, and indirectly the Plaintiff and the Plan's other participants and beneficiaries, suffered losses in their retirement investments.

110. Pursuant to ERISA §502(a) 29 U.S.C. § 1132(a), and ERISA § 409, 29 U.S.C. § 1109(a), Defendants are liable to restore the losses to the Plan caused by their breaches of fiduciary duties alleged in this Claim III.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for:

- A. A declaration that the Defendants, and each of them, have breached their ERISA fiduciary duties to the Participants;
- B. A declaration that the Defendants, and each of them, are not entitled to the protection of ERISA § 404(c)(1)(b), 29 U.S.C. § 1104(c)(1)(b);
- C. An order compelling the Defendants to make good to the Plan all losses to the Plan resulting from Defendants' breaches of their fiduciary duties, including losses to the Plan resulting from imprudent investment of the Plan's assets, and to restore to the Plan's all profits the Defendants made through use of the Plan's assets, and to restore to the Plan all profits which the Participants would have made if the Defendants had fulfilled their fiduciary obligations;
- D. Imposition a constructive trust on any amounts by which any Defendant was unjustly enriched at the expense of the Plan as the result of breaches of fiduciary duty;
- E. An order enjoining Defendants, and each of them, from any further violations of their ERISA fiduciary obligations;
- F. Actual damages in the amount of any losses the Plan suffered, to be allocated among the Participants' individual accounts in proportion to the accounts' losses;
- G. An order that Defendants allocate the Plan's recoveries to the accounts of all Participants who had any portion of their account balances invested in UnitedHealth stock maintained by the Plan in proportion to the accounts' losses attributable to the decline in the stock price of UnitedHealthcare;
- H. An order awarding costs pursuant to 29 U.S.C. § 1132(g);

I. An order awarding attorneys' fees pursuant to 29 U.S.C. § 1132(g) and the common fund doctrine; and

J. An order for equitable restitution and other appropriate equitable monetary relief against the defendants.

Dated: November 17, 2006

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