STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

IN RE UNITEDHEALTH GROUP INCORPORATED DERIVATIVE LITIGATION

Case Type: Other

Court File No. 27 CV 06-8085

Honorable George F. McGunnigle

This Document Relates To:

ACTIONS CONSOLIDATED BY ORDER ENTERED JULY 14, 2006 BY JUDGE FRANCIS J. CONNOLLY

CONSOLIDATED DERIVATIVE COMPLAINT

Plaintiffs Natalie Gordon, Fred Greenberg and Evelyn Greenberg ("Plaintiffs"), each a shareholder of UnitedHealth Group, Inc. ("UNH" or the "Company") at all times relevant herein and continuously to date, by and through their undersigned attorneys, allege upon personal knowledge as to themselves and their own acts, and upon information and belief and on the investigation conducted by and at the direction of their counsel as to all other matters, as follows:

INTRODUCTION

1. Plaintiffs bring this action derivatively on behalf of UNH, against the Company's Board of Directors (the "Board"), who, over the course of nearly a decade, completely abdicated their fiduciary responsibilities, and lied to UNH's public shareholders, by permitting the Company's Chairman and Chief Executive Officer, William W. McGuire, M.D. ("McGuire"), to dictate his own compensation through the manipulation of the Company's stock option plans. The Board's abdication of its fiduciary duties has resulted in McGuire being able to improperly and unlawfully amass

an extraordinary fortune in UNH stock options, currently valued at approximately $1.2 billion, and has caused the Company to overstate its earnings and issue materially false and misleading financial statements between 1997 and 2005.

2. Since at least 1996, the Board has, in violation of each and every UNH director's fiduciary obligations, permitted McGuire to effectively, at his sole discretion, set the strike price (the price at which the option to purchase stock can be exercised) for stock options granted to himself and other senior employees of the Company. As stock options are only worth as much as the difference between the strike price and the price on the day on which the option is exercised (known as the "spread"), McGuire and other executives were able to achieve unlawful windfall profits by backdating the date on which options were granted. The grant date under the Company's stock option plans was supposed to have set the strike price for an option based on the closing price of the stock on that day. McGuire, however, simply picked as grant dates those dates in the past on which Company's stock price closed at a relative low point and/or dates that immediately preceded the release of positive news that caused a dramatic increase in the stock price.

3. The Board eventually formalized this improper arrangement by approving a 1999 employment agreement with McGuire wherein the Board granted McGuire authority to set the date for his stock option grants, contrary to UNH's disclosure in documents approved by the Board and filed with the SEC. The Board never publicly disclosed that it authorized McGuire to manipulate the Company's option grants by backdating options and otherwise timing grants to maximize his personal profits, and annually approved McGuire's manipulated selection of grant dates. This abdication of

duty constituted a breach of the fiduciary duty that each member of the Board owes to the Company.

4. After McGuire consistently and repeatedly hit the lottery by selecting the most favorable dates for option grants to improperly maximize the value of his stock options, *The Wall Street Journal* concluded after a statistical analysis and exposé that UNH not only had more opportunely timed options grants than almost any corporation in the country, the timing was so opportune that it is nearly statistically impossible that the strike prices were set so perfectly every year so as to maximize spreads. *The Wall Street Journal* reported, for example that:

> On Oct. 13, 1999, William W. McGuire, CEO of giant insurer UnitedHealth Group Inc., got an enormous grant in three parts that – after adjustment for later stock splits – came to 14.6 million options. So far, he has exercised about 5% of them, for a profit of about $39 million. As of late February he had 13.87 million unexercised options left from the October 1999 tranche. His profit on those, if he exercised them today, would be about $717 million more.
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> ***The 1999 grant was dated the very day UnitedHealth stock hit its low for the year. Grants to Dr. McGuire in 1997 and 2000 were also dated on the day with those years' single lowest closing price. A grant in 2001 came near the bottom of a sharp stock dip.*** In all, ***the odds of such a favorable pattern occurring by chance would be one in 200 million or greater***. Odds such as those are "astronomical," said David Yermack, an associate professor of finance at New York University, who reviewed the Journal's methodology and has studied options-timing issues. (Emphasis added.)

Charles Forelle and James Bandler, "The Perfect Payday – Some CEOs Reap Millions By Landing Stock Options When They Are Most Valuable; Luck – Or Something Else?," *The Wall Street Journal*, March 18, 2006, at A1.[1]

[1] Unless otherwise noted, all emphasis in quoted text is added.

5. The revelation of improper manipulation of stock option grant dates at UNH and elsewhere has received tremendous national discussion. For instance, on May 5, 2006, President George W. Bush stated in an interview on the Kudlow & Company show airing on CNBC that "overcompensating or trying to backdate things is bad for America, and there ought to be consequences when people don't tell the truth and are not transparent." Likewise, Arthur Levitt, a former chairman of the SEC, was quoted in *The Wall Street Journal* as stating that stock option backdating "represents the ultimate in Greed.... "It is stealing, in effect. It is ripping off shareholders in an unconscionable way." SEC Chairman Christopher Cox has proclaimed that "The full weight of the federal government is being put behind this effort to stamp out fraudulent stock-option backdating."

6. On May 11, 2006, UNH disclosed in its Quarterly Report filed with the United States Securities and Exchange Commission ("SEC") that as a result of the improper option practices UNH estimated that its operating income for 2003-2005 had been overstated by at least $393 million (pretax) and that:

> [T]he 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.

7. With respect to its Controls and Internal Procedures relating to UNH's stock options, UNH further disclosed in the Quarterly Report that "[t]he Company has identified a ***significant deficiency in its controls relating to stock option plan administration and accounting for and disclosure of stock option grants***."

8. In reporting on the stunning admissions in the Quarterly Report, the *Associated Press* noted in a story entitled "UnitedHealth may have to restate results due to options" that "[i]t 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.

9. On August 10, 2003, *Bloomberg News*, in an article entitled "UnitedHealth's Directors Hold $230 Million in Stock" exposed the tremendous gain that McGuire and the other members of the Board realized from the backdating of options:

> UnitedHealth Group Inc. Chairman William McGuire sparked outrage among some stockholders over his $1.8 billion in potential stock-option gains. Turns out, the board of directors that granted those options got a share of the wealth, too.
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> ***UnitedHealth's 10 non-executive directors held $230 million in stock as of March 21***, according to the health insurer's most recent proxy. Director Richard Burke, who joined the board in 1977, had $169 million in shares, while Douglas Leatherdale owned $47 million. The directors, including former New Jersey Governor Thomas Kean and former Fannie Mae chief executive officer James Johnson, also held more than 3.1 million stock options, whose underlying value is about $175 million.
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> ***"You have to ask yourself, are these people paying attention to the mission of the corporation, or are they being distracted by the amount they're getting themselves?"*** says Minnesota Attorney General Mike Hatch, who is investigating Minnetonka-based UnitedHealth along with federal authorities.

10. In the wake of the disclosure of McGuire's improperly manipulated stock option grant dates, the SEC, the United States Department of Justice, and the Internal Revenue Service have each initiated various criminal or civil investigations of the Company's stock option practices approved by the Director Defendants herein.

11. The full extent of the impact that the Company's wrongful manipulation of option grant dates will have on UNH's financial statements has yet to be disclosed, but

the effect on the Company's stock price is already huge. Since mid-March, the Company's stock price has fallen 22%, losing about $17 billion in market capitalization.

12. Plaintiffs bring this derivative action on behalf of UNH in an attempt to collect on behalf of the Company the damages incurred by the Company as a result of the Board's undisclosed and *ultra vires* practice and breaches of fiduciary duty. Indeed, as a result of defendants' improprieties, the Company will need to expend or incur significant sums of money including the following:

a. Losses of earnings estimated at $393 million in operating earnings from 2002 through 2005;

b. Costs incurred to carry out internal investigations, including legal fees paid to outside counsel, accounting firms and consultants and to defend shareholder litigation;

c. Costs incurred from increased Directors and Officer's Insurance ("D&O Insurance") premiums as a result of the illegally manipulated stock option grants;

d. Enormous tax liabilities from improper deductions taken on backdated option grants;

e. Costs incurred from directing manpower to correct UNH's defective internal controls; and

f. Costs incurred from directing manpower to restate UNH's prior financial results to correct for the improperly dated stock option grants.

13. Additionally, UNH has suffered substantial damage to its reputation, an asset particularly valuable given its prominence in its industry.

JURISDICTION AND VENUE

14. This Court has jurisdiction over each and every defendant named herein because each defendant is either a corporation that conducts business in or maintains operations in Hennepin County or is an individual who has sufficient minimum contacts with Minnesota so as to render the exercise of jurisdiction by the courts of Minnesota permissible under traditional notions of fair play and substantial justice.

15. Venue is proper in the Court because one or more of the defendants either resides in or maintains executive offices in Hennepin County, a substantial portion of the transactions and wrongs complained of herein, including the defendants' primary participation in the wrongful acts detailed herein and aiding and abetting and conspiracy in violation of fiduciary duties owed to UNH occurred in Hennepin County, and defendants have received substantial compensation in Hennepin County for doing business here and engaging in numerous activities that had an effect in Hennepin County.

THE PARTIES

16. Plaintiffs Natalie Gordon, Fred Greenberg and Evelyn Greenberg purchased UNH common stock before the acts challenged in this action took place, have continually owned UNH stock since that time, and will continue to hold UNH stock throughout the course of this litigation. Plaintiffs fairly and adequately represent the interests of the shareholders of UNH in enforcing the rights of the Company.

17. Nominal defendant UNH is a corporation organized and existing under the laws of the State of Minnesota, with its principal place of business located at 9900 Bren Road East, Minnetonka, Minnesota 55343. UNH is a health services company that provides, among other things, managed care and health insurance products and services.

18. Defendant McGuire is and has been at all times relevant here the Chairman of the Board and Chief Executive Officer ("CEO") of UNH. McGuire joined the Company as Executive Vice President in November 1988 and became Chairman and CEO in 1991. McGuire also served as Chief Operating Officer ("COO") from May 1989 to June 1995 and as President from November 1989 until May 1999. McGuire personally benefited from the backdated stock option grants.

19. Defendant Stephen J. Hemsley ("Hemsley") is UNH's President and Chief Operating Officer and has been a director of UNH since 2000. Hemsley joined the Company in May 1997 as Senior Executive Vice President; became Chief Operating Officer in September 1998; and was named President in May 1999. Hemsley personally benefited from the backdated stock option grants.

20. Defendant William C. Ballard, Jr. ("Ballard") has been a director of UNH since 1993. Ballard is, and has been since 1992, Counsel to the law firm of Greenbaum Doll & McDonald PLLC in Louisville, Kentucky, which has performed legal work for the Company. Ballard is also Chairman of the Company's Audit Committee and a member of the Company's Nominating Committee and Executive Committee. Between 1997 and 1999, Ballard was a member of the Company's Compensation and Human Resources Committee ("Compensation Committee"). As a member of the Board and Compensation Committee, Ballard authorized and approved the backdated stock option grants.

21. Defendant Richard T. Burke ("Burke") has been a director of UNH since 1977. Burke also served as the CEO of UnitedHealthcare, Inc., the predecessor of UNH,

until February 1988. As a member of the Board, Burke authorized and approved the backdated stock option grants.

22. Defendant James A. Johnson ("Johnson") has been a director of UNH since 1993. Johnson is also Chairman of the Company's Compensation Committee. As a member of the Board and Compensation Committee, Johnson authorized and approved the backdated stock option grants.

23. Defendant Thomas H. Kean ("Kean") has been a director of UNH since 1993. Kean is also Chairman of the Company's Nominating Committee and a member of the Company's Audit Committee. Between 1997 and 2003, Kean was a member of the Compensation Committee. As a member of the Compensation Committee and the Board, Kean authorized and approved the backdated stock option grants.

24. Defendant Douglas W. Leatherdale ("Leatherdale") has been a director of UNH since 1983. Leatherdale is also a member of the Company's Audit Committee, Nominating Committee and Executive Committee. As a member of the Board, Leatherdale authorized and approved the backdated stock option grants.

25. Defendant Mary O. Mundinger ("Mundinger") has been a director of UNH since 1997. Mundinger is also a member of the Company's Compensation Committee. As a member of the Compensation Committee and the Board, Mundinger authorized and approved the backdated stock option grants.

26. Defendant Robert L. Ryan ("Ryan") has been a director of UNH since 1996. Between 1997 and 1999, Ryan was a member of the Compensation Committee. As a member of the Compensation Committee and the Board, Ryan authorized and approved the backdated stock option grants.

27. Defendant Donna E. Shalala ("Shalala") has been a director of UNH since 2001. Shalala is a member of the Company's Compliance and Government Affairs Committee ("Compliance Committee").

28. Defendant William G. Spears ("Spears") has been a director of UNH since 1991. Spears is a member of the Company's Compensation Committee, Nominating Committee and Executive Committee. As a member of the Board and the Compensation Committee, Spears authorized and approved the backdated stock option grants.

29. Defendant Gail R. Wilensky ("Wilensky") has been a director of UNH since 1993. Wilensky is Chairman of the Company's Compliance Committee. As a member of the Board, Wilensky authorized and approved the backdated stock option grants.

30. Defendants McGuire, Hemsley, Ballard, Burke, Johnson, Kean, Leatherdale, Mundinger, Ryan, Shalala, Spears and Wilensky are collectively referred to herein as the "Director Defendants."

31. Each of the Director Defendants aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking such actions to substantially assist the commission of the wrongdoing complained of herein, each Director Defendant acted with knowledge of the primary wrongdoing, substantially assisted the accomplishment of that wrongdoing, and was aware of his or her overall contribution to and furtherance of the wrongdoing.

SUBSTANTIVE ALLEGATIONS

32. For at least the past decade, stock options, which allow option holders to acquire shares of a company's stock on a future date at a price determined by the plan

terms (the "strike price") – most commonly the closing price for the stock on the day of or the day before the grant – have been a popular form of executive compensation, supposedly because they help align executive interests with those of the shareholders. As noted by *The Wall Street Journal*:

> Stock options give recipients a right to buy company stock at a set price, called the exercise price or strike price. The right usually doesn't vest for a year or more, but then it continues for several years. The exercise price is usually the stock's 4 p.m. price the day before[.]
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> A key purpose of stock options is to give recipients an incentive to improve their employer's performance, including its stock price. No stock gain, no profit on the options.

Charles Forelle and James Bandler, "The Perfect Payday – Some CEOs Reap Millions By Landing Stock Options When They Are Most Valuable; Luck – Or Something Else?," *The Wall Street Journal*, March 18, 2006, at A1.

33. In practice, the granting of stock options to senior management often did not have the desired effect, as the incentive to maximize the value of the stock options sometimes caused managers to look for ways to drive up stock prices in the short term through acquisitions, assets sales, or even fraud, rather than by effectively managing existing businesses for long term success, as many shareholders would prefer.

34. Although compensation experts continue to debate whether or not these risks outweigh the incentive stock options are intended to provide, a second, potentially larger, problem is beginning to surface: stock option plans are becoming just another place to hide lavish and unprecedented executive compensation.

35. Nowhere is this problem more pronounced than at UNH. There, the Director Defendants, in breach of their fiduciary duties to the Company, allowed

McGuire to set the strike price for his own stock options. The delegation of this authority to McGuire not only was a breach of fiduciary duty, but also constituted an *ultra vires* act that violated the terms of the Company's options plans approved by UNH's shareholders and applicable state law. *See* Minn. Stat. § 302A.401, subd. 1 ("a corporation may issue securities and *rights to purchase securities only when authorized by the board*").

36. Acting in his own financial interest, and contrary to law and the interests of the Company and with the benefit of inside information, McGuire year after year set the strike price for his options on dates on which the stock price was at a relative low. This practice likely went back to 1996, even though the employment agreement then in effect between McGuire and the Company did not provide McGuire with the ability to pick the grant date (and therefore set the strike price).

37. Every year the Board would rubber-stamp McGuire's manipulated windfall option grant date without any review. This derogation of duty is a breach of the fiduciary duties each Individual Director owed to the Company. As the Board never challenged, much less investigated, McGuire's selection of strike dates, the Director Defendants are not entitled to any deference, including the presumption provided by the business judgment rule, as that only attaches to an *informed* decision by the Board and does not apply when the board completely abdicates it responsibilities.

38. McGuire's manipulation of the grant date also resulted in a breach of McGuire's duty of undivided loyalty to the Company, yielding him millions of extra dollars each time options were exercised, all at the expense of the Company. Moreover, because McGuire controlled a material term of a transaction with the Company in which

he had a conflicting financial interest, McGuire has the burden of proving that his selection of grant dates for his stock options was "entirely fair" to the Company.

39. Moreover, as McGuire and Hemsley have been unjustly enriched though the exercise of options granted to them under improperly manipulated grant dates at the direct expense of the Company, they should be ordered to return their ill-gotten gains to the Company and all of the options that were wrongfully priced since 1996 should be rescinded and invalidated.

The 1991 Option Plan

40. Prior to 2002, the Company's stock option program for employees, including the McGuire and Hemsley, was governed by the 1991 Stock and Incentive Plan, as amended and restated effective May 14, 1997 (the "1991 Plan"), which Plan was approved by UNH shareholders.

41. The 1991 Plan provided that it "shall be administered by a committee (the 'Committee') of two or more directors of the Company, *none of whom shall be officers or employees of the Company* and all of whom shall be 'Non-Employee Directors' with respect to the Plan[.]" 1991 Plan at §3(a) (emphasis added). The 1991 Plan further stated that, among other things, "the Committee shall have plenary authority... to determine the purchase price of the Common Shares covered by each option[.]" *Id.* at §3(b).

42. The 1991 Plan also provided that the Compensation Committee, in certain limited and express situations, can delegate authority to the CEO to administer certain features of the 1991 Plan:

> The Chief Executive Officer of the Company shall have the authority, as granted by the [Compensation] Committee pursuant to clause (x) of the preceding subsection, to grant, pursuant to the Plan, options or other awards to eligible persons who are not considered by the Company as its

> officers or directors for purposes of Section 16 of the Securities Exchange Act of 1934, as amended.

Id. at §3(c)

43. Thus, the 1991 Plan provided that a committee of *independent* directors would be charged with administering the plan and that these directors *may* delegate to McGuire the authority to grant options, but only to *non-officer/director* (thus lower level) employees.

44. Lastly, the 1991 Plan provided that:

> The option price for all Incentive Stock Option granted under the Plan shall be determined by the [Compensation] Committee but shall not be less than 100% of the fair market value of the Common Shares at the date of grant of such option. The option price for options granted under the Plan which do not qualify as Incentive Stock options and, if applicable, the price for all awards shall also be determined by the [Compensation] Committee.

Id. at §5 (emphasis added).

45. Thus, the 1991 Plan required the Compensation Committee to set the price for all options granted under the plan and also required that the Compensation Committee set the exercise price at the fair market value of the underlying stock on the date the Compensation Committee granted the options.

<u>McGuire's 1996 Employment Agreement</u>

46. Effective as of January 1, 1996, UNH entered into an employment agreement (the "1996 Agreement") with McGuire "for the purpose of setting forth the terms and condition of [McGuire's] employment by [UNH] and to protect [UNH's] knowledge, expertise, customer and provider relationships, and the confidential information [UNH] has developed about its customers, providers, products, operations,

and services." The 1996 Agreement superseded all previous employment agreements and was in effect until the 1999 Agreement (defined below).

47. The 1996 Agreement provided McGuire with a lucrative pay package, including an annual base salary of $1.5 million and at least 250,000 nonqualified stock options annually, as well as providing him with significant benefits, including severance and retirement packages.

48. With respect to stock options grants, unlike most companies that set an objectively determined date for the options grants (such as by the first trading day of the year) well in advance of the grant and on notice to all parties, the 1996 Agreement provided that options grant dates would float: "The Options shall be granted semi-annually or *at such time or times as are mutually acceptable to Executive and the Company*. The exercise price for the Options shall initially be the fair market value of shares of [UNH] Common Stock at the time of the grant as determined by the Board[.]"

49. The Board, however, did not determine the grant date and did not determine the strike price. Instead, the grant dates were selected (and manipulated) by McGuire, thereby constituting an *ultra vires* act, in violation of the Company's own 1991 Plan, which required independent directors to administer the plan and only allowed for delegation of authority to McGuire in a limited number of situations, and Minn. Stat. § 302A.401.

<u>McGuire's 1999 Employment Agreement</u>

50. Effective as of October 13, 1999, UNH entered into an employment agreement (the "1999 Agreement") with McGuire "for the purpose of setting forth the terms and conditions of [McGuire's] employment by [UNH] and to protect [UNH's]

knowledge, expertise, customer and provider relationships, and the confidential information [UNH] has developed about its customers, providers, products, operations, and services." The 1999 Agreement superseded the 1996 Agreement and had an initial term of five years, which was renewed automatically each year "unless either party shall have delivered a written notice to the other party of its intention not to renew this Agreement at least 120 days prior to October 13 of any such year." The 1999 Agreement was renewed automatically in 2004, before it was amended in 2005 to belatedly return the power improperly delegated to McGuire back to the Compensation Committee.

51. The 1999 Agreement provided McGuire with a highly lucrative pay package, including (a) an initial $1.6 million annual salary, which the Board could raise at any time and in any amount so long as it raised McGuire's salary at least $100,000 each year, (b) options to purchase at least 325,000 shares of UNH each year, (c) an initial grant of options to buy 1 million shares of UNH stock, and (d) a full panoply of benefits, including lucrative severance and retirement packages.

52. Notwithstanding the generous compensation package, the 1999 Agreement contained a highly unusual provision whereby ***"[t]he Annual Options shall be granted on such a date or dates as [McGuire] requests by oral notification to the Chair of the Compensation and Human Resources Committee*** (with such notification confirmed promptly in writing)".

53. The provision in the 1999 Agreement whereby the Director Defendants agreed to delegate to McGuire the selection of the grant dates (and therefore the strike price) of his stock options was *ultra vires*, as the 1991 Plan under which the "Annual Options" referenced in the 1999 Agreement would be granted required a committee of

independent directors to set the strike price and was contrary to Minn. Stat. § 302A.401. Thus, it was outside of the Director Defendants' authority to delegate this power to McGuire. To the extent the 1991 Plan at all authorized the Compensation Committee may delegate certain functions with respect to employee stock options, those functions were expressly limited to option grants to lower-level, non-officer/director employees.

54. Indeed, *The Wall Street Journal* noted with respect to the 1999 Agreement that:

> Arthur Meyers, an executive-compensation attorney with Seyfarth Shaw LLP in Boston, said a contract such as that sounded "like ***a thinly disguised attempt to pick the lowest grant price possible***." Mr. Meyers said such a pact could pose several legal issues, possibly ***violating Internal Revenue Service and stock-exchange listing rules that require directors to set a CEO's compensation***. "If he picks the date of his grant, he has arguably set a portion of his pay[.]"

Charles Forelle and James Bandler, "The Perfect Payday – Some CEOs Reap Millions By Landing Stock Options When They Are Most Valuable; Luck – Or Something Else?," *The Wall Street Journal*, March 18, 2006, at A1.

55. Moreover, as the Director Defendants abdicated their responsibility to negotiate a key provision of the Company's option plan to an undeniably interested party, it was a breach of their fiduciary duties of care and loyalty, as recognized by the fact that the 1991 Plan did not permit McGuire to set the strike price for his own options in the first instance and by Minn. Stat. § 302A.401.

The 2002 Option Plan

56. In 2002, the Company restructured its option plan, rolling the 1991 Plan as well as several other option plans that did not involve McGuire's options into one, comprehensive plan, known as the 2002 Stock Incentive Plan (Amended and Restated

May 15, 2002) (the "2002 Plan"), which was approved by UNH shareholders. Like the 1999 Plan, the 2002 Plan provided that "the Plan shall be administered by the Committee," which is defined as "a committee of the Board or Directors of the Company designated by such board to administer the Plan and composed of not less than two directors. To the extent required by Section 162(m) of the [Tax] Code, the Committee shall be composed solely of two or more 'outside directors' within the meaning of Section 162(m) of the Code." 2002 Plan at §3(a) (emphasis added).

57. The 2002 Plan further provided that "[u]nless otherwise ***expressly*** provided in the Plan, all designations, determinations, interpretation and other decisions under or with respect to the Plan or any Award *shall* be within the *sole* discretion of the Committee[.]" *Id.* (emphasis added). Thus, the 2002 Plan required a committee of independent directors to administer the Company's stock option program and to make all decisions that the 2002 Plan did not expressly authorize the Compensation Committee to delegate. Like the 1999 Plan, the 2002 Plan authorized the Compensation Committee to delegate only decisions regarding option grants to lower level employees who are not officers and/or directors. As a result, the 2002 Plan provided that the Compensation Committee could not delegate to McGuire the authority to select the grant date for his own stock options, and such a delegation of power in violation of the 2002 Plan and Minn. Stat. § 302A.401 would be an *ultra vires* act.

58. Nonetheless, the Director Defendants failed to conform McGuire's 1996 Employment Agreement to the 2002 Plan. Instead, without any public disclosure, the Board continued to permit McGuire to select grant dates for his own stock options, in violation of the 2002 Plan and Minn. Stat. § 302A.401. Each time McGuire selected –

and the Board allowed him to select – a grant date for his options constituted an *ultra vires* act, and each grant of options issued pursuant to the 2002 Plan should be rescinded and, to the extent the options were exercised, the proceeds should be disgorged to the Company.

McGuire Selects the Stock Option Grant Dates

59. At least as far back as 1996, the Board permitted McGuire to set the strike price for stock options issued by the Company to McGuire and other employees of UNH by choosing the grant date for such options. The Board formalized McGuire's ability to select option grant dates in his 1999 Employment Agreement, but an analysis of the pattern of the grant dates for McGuire's stock options shows that McGuire had been exercising that authority well before the 1999 Employment Agreement.

60. The unusual procedure agreed to by the Board whereby McGuire was required to provide only *oral* notice to the Compensation Committee, without any requirement that such notice be given sufficiently far in advance of the grant date so that the process could not be so easily manipulated, enabled McGuire from at least 1996 through 2003 (with the implementation of faster reporting requirements under the Sarbanes-Oxley Act of 2002) to exploit the improper authority given to him to his extraordinary personal benefit and to the material detriment of the Company.

61. ***The 1996 Options***. The Board granted McGuire 250,000 stock options in 1996 with a grant date of July 30, 1996, yielding a strike price of $33.75. (Adjusted for splits, 2 million options at approximately $4.72 per share.) On the first day of July, 1996, the share price closed at $51.00; on the first trading day of June, the prior month, the share price closed at over $55.00; and by August 9, 1996, the share price was back up

over $40.00 in intraday trading. Thus, the 1996 option grant fell right in the middle of a dip in UNH's share price.

62. ***The 1997 Options.*** The Board granted McGuire 450,000 stock options in two traunches in 1997. First, he received a grant of 250,000 options on February 11, 1997, with a strike price of $46.8750. (Adjusted for splits, 2 million options at approximately $5.86 per share.) On the final trading day of January 1997, the share price closed at $48.75, or almost $2.00 higher than the strike price. More significantly, the very next day the share price closed at $48.63; the day after that, $50.63; and, the day after that, $54.38. In other words, between closing on February 11, 1997 and closing on February 14, 1997, UNH's share price went from $46.88 to $54.38, more than a 15 percent jump in just three days. Second, McGuire received a grant of 200,000 options on October 27, 1997 with a strike price of $43.0625. (Adjusted for splits, 1.6 million options at approximately $5.38 per share.) Remarkably, the closing share price on October 24, 2997 – *the trading day immediately prior to the option grant* – was $51.63 and by November 6, 1997, the share price hit $54.00.

63. ***The 1998 Options.*** The Board granted McGuire 490,000 stock options in two traunches in 1998. First, on January 20, 1998, UNH granted McGuire 250,000 options with a strike price of $47.9375. (Adjusted for splits, 2 million options at approximately $5.00 per share.) On January 8, 1998, the closing share price was $50.50, or more than five percent more than the strike price. By January 30, 1998, the final trading day of the month, the closing share price was $51.25. In February, the share price surpassed $60.00; in March, the share price surpassed $65.00; and in April, the share price closed as high as $72.50, representing a greater than 50 percent paper return in the

three months immediately following the 1998 grant. Second, on October 16, 1998, UNH granted McGuire 240,000 options with a strike price of $40.00 per share. (Adjusted for splits, 1.96 million options with at approximately $5.00 per share.) This was exactly $2.00 lower than the closing share price on the prior trading day, and by October 30, 1998, the final trading day of the month, the stock closed at $43.00. By November 6, 1998, the share price closed at $49.69, giving McGuire nearly a 25 percent gain in approximately three weeks.

64. ***The 1999 Options.*** The Board granted McGuire 2.075 million stock options in two traunches in 1999. First, on February 17, 1999, UNH granted McGuire 250,000 options with a strike price of $46.81. (Adjusted for splits, 2 million options at approximately $5.85 per share.) On February 1, 1999 the share price reached a high of over $48.00 and closed at $47.50 and by March 3, 1999, the share price was back over $50.00. Second, on October 13, 1999, UNH granted McGuire 1.825 million options with a strike price of $40.13. (Adjusted for splits, 14.6 million options at a strike price of approximately $5.02 per share.) Not only was this the lowest closing price of the year, on September 29, 1999, the share price closed at $60.50 and by November 2, 1999, the closing share price was back up to $55.31, making this second 1999 option grant not only the largest McGuire had seen to date, but also the one that fell in the largest dip in UNH's share price.

65. ***The 2000 Options.*** The Board granted McGuire 325,000 options in 2001 and McGuire chose the grant date (and therefore the strike price). McGuire selected a grant date of March 8, 2000, which yielded a strike price of $47.63, the closing price that day (split adjusted to $5.94 on 2.6 million options today), whereas on the prior day and

subsequent day, UNH stock closed at $52.50 and $50.88 respectively. Indeed, UNH stock prices in March were abnormally low. UNH's February high was $62.88 (on February 17) and its April high was $69.44 (on April 24). McGuire's chosen grant date was not just lucky; it was also particularly questionable because companies typically grant options at the beginning of the year and not in March. Indeed, had McGuire chosen February 17 for the issue date – just 13 trading days earlier – his total strike price for these options would have been almost $5 million higher. Had the options been granted on April 24, his total strike would have been $7 million higher. Thus, not only was this grant an *ultra vires* act that should be invalidated, it also is a breach of fiduciary duty. The enormity of the "windfall" to McGuire is staggering. If he exercised these options and sold the shares at UNH's closing price on May 1, 2006, his net proceeds would have been more than $114 million – a profit of $43.68 per share.

66. ***The 2001 Options.*** The Board granted McGuire 650,000 stock options in 2001, and again McGuire chose the grant date (and therefore the strike price). McGuire selected a grant date of January 17, 2001, for a strike price of $52.6875, the closing price that day (split-adjusted to a grant of 2.6 million options with a strike price of $13.172). In contrast, UNH's closing share price on the last trading day of 2000 (December 29) was $61.38 and by February 5, 2001, the stock price surpassed this mark, closing at $62.41. (The timing of a dip in the stock price for which to select the grant date in early January made timing of the grant itself, on its face, not as suspect.) Picking the date on which the price was lowest to grant himself options was not only an *ultra vires* act, but also a breach of fiduciary duty. If McGuire had exercised these options and sold the shares at

UNH's closing price on May 1, 2006, his net proceeds would have been more than $95 million – a profit of $36.625 per share.

67. ***The 2002 Options.*** The Board granted McGuire 650,000 stock options in 2002, and again McGuire chose the grant date (and therefore the strike price). McGuire selected a grant date of January 7, 2002, which yielded a strike price of $69.55, the closing price that day (or a split-adjusted award of 2.6 million options with a strike price of $17.3875). This is one of only four days in all of January and February on which the price of UNH stock closed under $70.00. Indeed, by January 17, the prior year's strike date, the share price hit $73.00 per share. As with the grant in 2001, the timing was right, in the first week of January, and roughly the same time as the prior year, again deferring discovery of the pattern of oddly timed and especially lucrative option grants. Nonetheless, this act was *ultra vires* and a breach of fiduciary duty. If McGuire had exercised these options and sold the shares at UNH's closing price on May 1, 2006, his net proceeds would have been more than $84 million – a profit of $32.4125 per share.

68. ***The 2003 Options.*** The Board granted McGuire 650,000 stock options in 2003 and again McGuire chose the grant date (and therefore the strike price). McGuire selected a grant date of February 12, which yielded a strike price of $80.24 (split-adjusted to an award of 2.6 million options with a strike price of $20.06). The prior day, the stock closed at $83.44, the day before that at $85.60 and by February 18, the share price was back up to over $82. Significantly, the stock price declined 3.8 percent the date of the grant (strike price is determined by the closing price of the stock on the date of the grant), 2.5 percent the day before and a total of 8.7 percent since the beginning of February. Given this, it is no surprise that McGuire could not maintain some discipline and stick

with a January grant date, as he had for the previous two years. Even if he did, it would have been *ultra vires* act, but this "perfect timing" was also a breach of fiduciary duty. If McGuire had exercised these options and sold the shares at UNH's closing price on May 1, 2006, his net proceeds would have been more than $77 million – a profit of $29.74 per share.

69. ***The 2004 Options.*** The Board granted McGuire received 1.3 million stock options in 2004 and again McGuire chose the grant date (and therefore the strike price). McGuire selected a grant date of February 11, 2004, for a strike price of $59.40, the closing price of the stock that day (split adjusted to 2.6 million options at $28.70). Although McGuire's targeted strike price selection is not quite as pronounced as in prior years, the share price dropped to below $60.00 on February 5 and was back above $60.00 by February 17, only giving McGuire a 12-day window to grant himself options with a strike price under $60.00. Given the number of options McGuire is granted each year, an extra dollar translated to large profits and 2004 fits the pattern of selecting grant dates that yield relatively low strike prices. Thus, once again, not only did McGuire commit an *ultra vires* act, he also breached his fiduciary duty. If McGuire had exercised these options and sold the shares at UNH's closing price on May 1, 2006, his net proceeds would have been more than $54 million – a profit of $21.10 per share.

70. ***The 2005 Options.*** The Board granted McGuire 850,000 options in two traunches in 2005 and again McGuire chose the grant date (and therefore the strike price). McGuire selected a grant date of February 3, 2005 for the first 650,000 options, which yielded a strike price of $90.56 (or a split-adjusted strike price of $45.24 for 1.3 million options). By April 7, 2005, the share price was up to over $99. The selection of strike

price here thus yielded a return of approximately 10% in little more than two months. The second group of 200,000 options was granted on May 2, 2005, yielding a strike price of 94.68 (or a split-adjusted grant of 400,000 options at $47.34 per share). On Monday May 3, 2005 (the next trading day) the share price increased up to over $2.00 and then increased another $2.00 by Friday, May 6, when the share price closed at $98.41. Thus, the options granted on Monday yielded profits of approximately $4.00 per share by that Friday. Given that McGuire was granted 200,000 options, this amounted to approximately $800,000 in profits for McGuire in just five days. McGuire's *ultra vires* act was again a breach of his fiduciary obligations to the Company and its shareholders. If McGuire had exercised these options and sold the shares at UNH's closing price on May 1, 2006, his net proceeds would have been more than $6.4 million.

71. Both the 2002 Plan and the 1991 Plan are clear: the strike price for options granted pursuant to either plan cannot be less than 100 percent of the fair market value of the security on the date on which the option is granted. Thus, the backdating of each option grant violated both plans and, therefore, was *ultra vires*. This impermissible backdating was not discoverable until a pattern was established. Now that the pattern is clear, these impermissibly backdated options must be rescinded.

McGuire's and the Board's Failures

72. First, the Compensation Committee's delegation of the right to select a grant date to McGuire was *ultra vires* – a clear violation of the 1991 Plan and Minn. Stat. § 302A.401. Furthermore, each time McGuire selected a grant date, his action was also *ultra vires*. Then, when the Board allowed this chicanery to continue despite adopting the 2002 Plan, which yet again made it improper for the Board to delegate to McGuire

the authority to grant himself options, each grant date selected by McGuire following the 2002 Plan was another *ultra vires* act.

73. Second, as Chairman and CEO, each and every time McGuire picked a grant date, he owed a fiduciary duty to act in good faith and with undivided loyalty to the Company. Specifically, his status as a fiduciary required him to put the Company's interests ahead of his own. McGuire's pattern of picking only dates with relatively low stock prices for setting the strike price for his stock options constituted repeated breaches of his fiduciary duty and violated the applicable shareholder-approved plan and Minn. Stat. § 302A.401.

74. The remainder of the Director Defendants likewise failed to provide the appropriate checks and balances necessary to ensure that this sort of manipulation did not occur. Their failure to review McGuire's selection of grant dates before approving them was a complete abdication of their fiduciary duties – a clear breach of the duty of care for which they are not entitled to the protection of the business judgment rule. Furthermore, relinquishing their duty year in and year out by allowing an interested party to set a material term of his own compensation without oversight or input is an impermissible breach of the duty of loyalty.

McGuire, Hemsley and Others Eligible for Options Are Unjustly Enriched As the Company Is Harmed

75. Because McGuire, in breach of his fiduciary duty, set the strike prices for UNH's options in a way favorable to him, but harmful to the Company, he and others with option grants received hundreds of millions of dollars of additional compensation to which they would not be entitled had a strike price beneficial to the Company been

picked, as was required. As a result, McGuire, Hemsley and all others who were granted improperly dated options were unjustly enriched.

76. McGuire reaped windfall proceeds of more than $413 million from exercising stock options to date. As of December 31, 2005, he had an additional 12,320,000 exercisable options outstanding with an "in-the-money" value of more than $1.6 billion.

77. Hemsley has reaped windfall proceeds of more than $107 million from exercising stock options to date. As of December 31, 2005, he had an additional 12,320,000 exercisable options outstanding with an in-the-money value of more than $660 million.

78. In addition to the options granted to McGuire, and Hemsley, other executives also received a substantial number of improper stock options:

Name	**Shares of Stock for Options Granted**
James G. Carlson (former UNH executive officer and President of the Health Plans division)	85,000
Arnold H. Kaplan (former UNH Chief Financial Officer)	90,000
David P. Koppe (former UNH Chief Financial Officer)	50,000
Donald J. Lubben (UNH General Counsel and Secretary and former corporate partner at Dorsey & Whitney LLP)	125,000
Thomas P. McDonough (former UNH executive officer and CEO of the Strategic Business Services division)	75,000
Jeannine M. Rivet (UNH Executive Vice	201,000

Name	Shares of Stock for Options Granted
President)	
Robert J. Sheehy (UNH executive officer and CEO of a UNH's UnitedHealthcare subsidiary)	125,000
R. Channing Wheeler (former UNH executive officer and CEO of UNH's Uniprise subsidiary	218,760
Travers H. Willis (former UNH Chief Operating Officer)	190,000

79. UNH is regulated by state insurance commissioners. UNH has a contract with the American Association of Retired Persons ("AARP"). Pursuant to section 10.2 of the AARP Health Insurance Agreement by and among American Association of Retired Persons, Trustees of the AARP Insurance Plan and United HealthCare Insurance Company dated as of February 26, 1997, AARP can terminate the agreement "if, in AARP's reasonable judgment, United (i) acts in a way materially adverse to the preservation and promotion of goodwill towards AARP and AARP Trust." A significant portion of UNH's revenue and net income is attributable to its contract with AARP. The conduct described herein jeopardizes UNH's business and regulatory standing.

DEMAND FUTILITY ALLEGATIONS

80. The members of the Board at the time of the filing of this Complaint were McGuire, Ballard, Hemsley, Burke, Johnson, Kean, Leatherdale, Mundinger, Ryan, Shalala, Spears and Wilensky.

81. Plaintiffs did not make a demand on the Board to bring this action against themselves to rectify the wrongs complained of herein because: (1) the delegation to

McGuire of the authority to choose the issue date of stock option grants was an *ultra vires* act, excusing demand; (2) the entire fairness doctrine applies here, excusing demand; and (3) there is not a majority of disinterested and independent directors among the Director Defendants to appropriately consider such a demand as all twelve directors have disabling interests or conflicts.

82. The power and duty to set executive compensation in the best interests of the Company resides with the Board, and the Board delegated that authority to the Compensation Committee. The authority vested in the Compensation Committee was expressed in the terms of the 1991 Plan and the 2002 Plan and subject to Minn. Stat. § 302A.401. The Compensation Committee members delegated their authority to determine the issue date of options to McGuire in violation of the express terms of the 1991 Plan and the 2002 Plan, which allowed a delegation only of the authority to grant options to lower level employees (non-officer and non-director), and in violation of Minn. Stat. § 302A.401. The delegation to McGuire of the right to determine the strike price for his own options constituted *ultra vires* acts because it violates the terms of the 1991 Plan, the 2002 Plan, and Minn. Stat. § 302A.401 and those acts are void or voidable and are not subject to approval or ratification by the board, or otherwise excused, pursuant to Minn. Stat. § 302A.255. Claims alleging *ultra vires* acts are not subject to the demand requirement because the business judgment rule does not protect *ultra vires* acts.

83. Even if the Compensation Committee's delegation to McGuire did not violate the language of the 1991 Plan and the 2002 Plan, the delegation still permitted McGuire himself to set the vast majority of his own compensation. The fact that McGuire did set the vast majority of his own compensation under this scheme is

undeniable because option value is by far the largest component of McGuire's and, indeed, each employee's compensation at UNH. For example, McGuire's net proceeds of more than $133 million from stock option exercises in 2004 dwarfed his 2004 salary and bonus of roughly $7.7 million. Indeed, McGuire has realized more than $413 million in new profit from the exercise of options and sale of shares since October 31, 2000.

84. As the Compensation Committee allowed McGuire to largely set his own compensation, the "entire fairness" doctrine applies and demand is automatically excused. Whenever a director is entrusted to make a decision about a corporate transaction in which that director has a financial interest, the entire fairness doctrine is triggered. The doctrine carries a presumption that the transaction was accomplished to favor the interests of the director over the corporation, and the director carries the burden of demonstrating that the transaction was actually entirely fair to the corporation. Given that presumption and burden-shifting, the business judgment rule is rebutted. As the business judgment rule is the basis of the demand requirement, demand cannot apply where the business judgment rule does not. McGuire, who clearly was financially interested in the strike price of stock options, was the sole director to determine the issue date of the options. As the sole decision maker, he cannot meet the business judgment rule and demand cannot apply.

85. The options granted to McGuire on dates selected by McGuire are invalid and, therefore, void or voidable, and are not saved by the exceptions to voiding pursuant to Minn. Stat. 302A.255 because McGuire will not be able to sustain his burden of establishing that the options were fair and reasonable as to UNH at the time such options were granted, the material facts relating to these options were misrepresented to UNH's

shareholders and were contrary to plans approved by those shareholders, and such grants cannot be ratified by the board, assuming the requisite number of disinterested directors, because any ratification is precluded by shareholder-approved plans governing the grant of such options and UNH's prior public disclosures.

86. Demand is excused even in the absence of an entire fairness standard because the current Board is disabled from considering a demand due to their abdication of the duty to determine executive compensation, their interest, and their lack of independence.

87. Directors who abdicate their duties do not get the benefit of the business judgment rule, because they exercised no business judgment. The Compensation Committee was charged with the responsibility of setting appropriate compensation levels for the Company's executives, and the members of the Compensation Committee abdicated and otherwise failed to meet that responsibility. Mundinger and Spears have been members of the Compensation Committee since at least 1999, and they abdicated their duties in each of the years challenged herein. Kean was a member of the Committee in 2000, 2001 and 2002, and he abdicated his duties in each of those years. Johnson has been a member of the Committee since 2003, and he has abdicated his duties since that time. Thus, these four directors are disqualified from considering a demand.

88. McGuire is financially interested in the stock option grants, as he has reaped windfall proceeds of more than $413 million from exercising stock options to date. As of December 31, 2005, he had an additional 12,320,000 exercisable options outstanding with an "in-the-money" value of more than $1.6 billion. Due to his financial interest, McGuire is clearly unable to appropriately consider a demand.

89. Hemsley too is financially interested in the stock option grants, as he has reaped windfall proceeds of more than $107 million from exercising stock options to date. As of December 31, 2005, he had an additional 12,320,000 exercisable options outstanding with an "in-the-money" value of more than $660 million. In addition to being financially interested in the underlying transactions, Hemsley is further disqualified from considering a demand because he lacks independence from McGuire and the other members of the Board, by virtue of the fact that Hemsley is the Company's President and Chief Operating Officer and owes his livelihood to McGuire and the rest of the Board. That livelihood is substantial, as Hemsley earned over $3.4 million in salary and bonus alone in 2005.

90. Ballard, Burke, Leatherdale, Ryan, Shalala and Wilensky likewise cannot consider a demand as they too abdicated their duty to revoke the Compensation Committee's authority to set executive compensation when it became clear that the Compensation Committee had delegated critical determinations to McGuire contrary to shareholder-approved plans and was not actually exercising that authority. The Compensation Committee abandoned its duties by granting McGuire, who is undeniably interested in the decision, the sole power to determine the issue date of his and the other employees' options. Ballard, Burke, Leatherdale, Ryan, Shalala and Wilensky had the duty to take back the full Board's authority to set executive compensation when the Compensation Committee failed to appropriately fulfill that duty. Their failure to do so is an abdication which negates application of the business judgment rule and excuses demand.

91. The Audit Committee is comprised of defendants Ballard (Chair), Leatherdale and Kean, and is responsible by its charter for (i) evaluating the performance, responsibilities, budget and staffing of the Company's internal audit function; (ii) reviewing the internal audit plan; and (iii) reviewing with management, the internal auditors and the independent auditors the Company's annual and quarterly financial statements. These defendants were responsible as members of the Audit Committee for insuring that UNH's internal controls were adequate and that the Company's quarterly and annual financial statements were accurate. UNH's internal controls, however, were deficient as evidenced by its executives' improper backdating of stock option grants. As a result of the improper option backdating, the Company's financial statements were rendered inaccurate because those financial statements did not account for the true amount of compensation being granted to UNH's executives. Accordingly, Ballard, Leatherdale and Kean are conflicted and face a substantial likelihood of liability for their breaches of fiduciary duty to UNH.

92. The Nominating Committee consists of defendants Kean (Chair), Ballard, Leatherdale and Spears. The Nominating Committee's duties include identifying and nominating individuals to be proposed for election as directors at each Annual Meeting of Shareholders, filling board vacancies, conducting the director and Board evaluation process, evaluating the categorical standards which the Board of Directors uses to determine director independence, and monitoring and evaluating corporate governance. Nevertheless, these defendants authorized the filing of Proxy Statements, in support of their nominations to fill board vacancies, which failed to disclose that the Management Directors' stock options had been back-dated. Accordingly, defendants Kean, Ballard,

Leatherdale and Spears are conflicted and face a substantial likelihood of liability for their breaches of fiduciary duty to UNH.

93. Indeed, UNH's non-employee directors receive substantial compensation in the form of annual retainers, stock option grants and Board and committee fees. Specifically, UNH paid the following compensation to each director during 2005: (i) an annual retainer of $30,000; (ii) a $1,500 fee for attending each Board meeting in person ($750 for attending by telephone); (iii) the Chairman of each of the Audit Committee and Compensation Committee received an annual retainer of $5,000; (iv) grants of non-qualified stock options to purchase 58,000 shares of common stock, quarterly grants of non-qualified stock options to purchase 8,000 shares of common stock, and conversion grants made pursuant to an election by a director to convert annual retainer and meeting attendance fees into options to purchase common stock. Accordingly, defendants Ballard, Burke, Johnson, Kean, Leatherdale, Mundinger, Ryan, Shalala, Spears and Wilensky are interested in maintaining their positions on the Board so as to safeguard their substantial compensation and unvested stock options and demand upon these defendants to bring this action against themselves and McGuire is futile.

94. The Director Defendants also substantially benefited from their participation in the option backdating scheme through their own receipt of the tainted stock options:

Name	**Shares of Stock for Options Granted**
Ballard	302,000
Burke	422,270

Name	Shares of Stock for Options Granted
Johnson	410,020
Kean	389,840
Leatherdale	426,190
Mundinger	314,320
Ryan	170,370
Spears	392,590
Wilensky	251,510

95. Because of their substantial benefit from options granted to UNH's board of directors, UNH lacks a majority of disinterested directors to consider any demand to bring this action against themselves to seek a recovery on behalf of UNH for such scheme, including to cancel all improperly granted options, and, pursuant to Minn. Stat. § 302A.255, UNH lacks directors able to consider whether to ratify or otherwise approve the transactions at issue herein.

96. Mundinger is Dean of the Columbia University nursing school, and UNH provides critical support to a project promoted by Mundinger to create nurse-practitioner clinics, including encouraging patients to use Mundinger's clinic and encouraging other insurers to support the clinic.

97. Leatherdale is a former Chairman and Johnson (Chairman of the Compensation Committee) is a trustee of the University of Minnesota Foundation, a university fund-raising arm. The McGuire family foundation made a $4 million gift to the University of Minnesota Foundation in early 2006.

98. Leatherdale is further disqualified from considering a demand because he sits on the board of the St. Paul Companies, from whom UNH has purchased insurance products.

99. Burke, former CEO of UNH's predecessor corporation, is married to a former UNH employee who has received significant stock options from the Company.

100. McGuire, McGuire's wife, Burke, and others at UNH have also made financial donations to the U.S. Senate campaign of Kean's son in New Jersey. *The Wall Street Journal* reported that "[w]hen the donations to the Kean Senate campaign were described to former SEC Chairman Harvey Pitt, he said they struck him as "ill-advised and strange" and something that could be seen as an attempt to influence a witness because of the senior Mr. Kean's role on the compensation committee." James Bandler and Charles Forelle, "In Internal Probes of Stock Options, Conflicts Abound," *The Wall Street Journal*, August 11, 2006, at A1.

101. Ballard is further disqualified from considering a demand because he is of counsel to Greenbaum, Dolle & McDonald, a law firm that has represented UNH and derived significant fees from that representation.

102. Shalala is further disqualified because she and Johnson (Chairman of the Compensation Committee) together serve on the board of Gannett Co., Inc., such that their business lives are sufficiently entangled that neither would authorize suit against the other.

103. Moreover, in order to bring this suit, all of the directors of UNH would be forced to sue themselves and persons with whom they have extensive business and

personal entanglements, which they will not do and which they cannot do objectively, thereby excusing demand.

104. UNH has been and will continue to be exposed to significant losses due to the wrongdoing complained of herein, yet the Director Defendants and current Board have not filed any lawsuits against themselves or others who were responsible for that wrongful conduct to attempt to recover for UNH any part of the damages UNH suffered and will suffer thereby.

105. Finally, despite the Director Defendants' knowledge of the claims and causes of action raised by plaintiffs, the current Board has failed and refused to seek to recover for UNH for any of the wrongdoing alleged herein.

106. Requiring plaintiffs to demand defendants to bring this action to seek relief on behalf of UNH would negate Minn. Stat. § 302A.467, which provides that where a corporation formed under Minnesota law or an officer or director of such a corporation violates a provision of Minn. Stat. §§ Minn. Stat. § 302A.001 *et seq.*, a court in this state may, in an action brought by a shareholder of the corporation, grant any equitable relief it deems just and reasonable in the circumstances and award expenses, including attorneys' fees and disbursements, to the shareholder.

STATUTORY STANDARD OF CONDUCT

107. Each of the Director Defendants failed to discharge his or her duties as a director of UNH in good faith, in a manner he or she reasonably believed to be in the best interests of UNH, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances, thereby failing to adhere to the standard of conduct required of them pursuant to Minn. Stat. § 302A.251.

108. Pursuant to Minn. Stat. § 302A.251, subd. 4, any provision in UNH's articles of incorporation limiting director liability is ineffective with respect to the Director Defendants' conduct alleged herein because such conduct was reckless and not in good faith; constituted a breach of loyalty to UNH and its shareholders in that, by allowing McGuire to set his own compensation and that of his top executives in direct violation of shareholder-approved plans proscribing such conduct, the Director Defendants preferred the interests of McGuire over those of UNH and its shareholders; and, as to the Management Defendants, the conduct involved transactions from which they derived an improper personal benefit.

109. Pursuant to Minn. Stat. § 302A.361, the Management Defendants were required to discharge their duties in good faith, in a manner they reasonably believed to be in the best interests of UNH, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

110. McGuire and Hemsley failed to discharge their duties in good faith, failed to discharge their duties in a manner they reasonably believed to be in the best interests of UNH, and failed to discharge their duties with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

SPECIAL PLEADING MATTERS: TOLLING OF THE STATUTE LIMITATIONS

111. Section 541.05 of the Minnesota Statutes established a six year limitations period for breach of fiduciary duty claims. Accordingly, claims relating to defendants' breach of their fiduciary duties in connection with stock options granted by the Company from 2001 to the present date unquestionably are timely.

112. Claims relating to defendants' breach of their fiduciary duties for stock options granted between 1996 and 2000 are likewise timely. As an initial matter, Defendants wrongfully concealed their manipulation of the stock option plans, through strategic timing and fraudulent backdating, by issuing false and misleading proxy statements, by falsely reassuring UNH's public investors that UNH's option grants were being administered by a committee of independent directors, and by failing to disclose that backdated options were, in fact, actually issued on dates other than those disclosed, and that strategically timed option grants were issued based on the manipulation of inside information that ensured that the true fair market value of the Company's stock was, in fact, higher than the publicly traded price on the date of the option grant.

113. UNH's public investors did not know and had no reason to know of the defendants' breach of their fiduciary duties until March 18, 2006, when *The Wall Street Journal* exposed the Director Defendants' improper option practices at UNH.

114. Finally, as fiduciaries of UNH, the Director Defendants cannot rely on any limitations defense where they withheld from disclosure to UNH's shareholders the facts that give rise to the claims asserted herein, that is, that the Board had abdicated its fiduciary responsibilities to oversee the Company's executive compensation practices, that the option grant dates had been manipulated to maximize the profit for the grant recipients, and that such practices caused the Company to incur additional unreported expenses (thereby understating reported expenses and overstating reported profits) and tax liabilities.

COUNT I

Breach of Fiduciary Duties Against the Director Defendants
(Except Mundinger, Shalala and Hemsley) for the 1996 Options Grant

115. Plaintiffs repeat, reallege and incorporate all of the allegations set forth above as if fully set forth herein.

116. The Director Defendants (except Mundinger, Shalala and Hemsley), as officers and/or directors of UNH, at all times relevant to this action, were fiduciaries of UNH and owed UNH the highest duties of good faith, due care, fair dealing, candor and loyalty.

117. The Director Defendants (except Mundinger, Shalala and Hemsley) have acted *ultra vires* by either delegating or improperly sharing authority to set the strike price of options to McGuire. McGuire also acted *ultra vires* in participating in the election of the grant date for his options.

118. The Director Defendants (except Mundinger, Shalala and Hemsley) have breached their fiduciary duty of care and loyalty by completely abdicating or improperly sharing their responsibility to set the strike price for the 1996 Options to an interested party.

119. The Director Defendants (except Mundinger, Shalala and Hemsley) have breached their fiduciary duty of candor by failing to disclose that they completely abdicated or improperly shared their responsibility to set the strike price for the 1996 Options to an interested party and that the interested party, McGuire, a fiduciary himself, had a secret plan to set the strike price on a date that improperly benefited him the most, to the detriment of the Company.

120. McGuire additionally has breached his fiduciary duties of care and loyalty by controlling or improperly influencing a material term of an interested party transaction between himself and the Company (that is, the strike price of his own options), which term was not entirely fair to the Company.

121. Plaintiffs, on behalf of UNH, have no adequate remedy at law.

COUNT II

Breach of Fiduciary Duties Against the Director Defendants (Except Shalala and Hemsley) for the 1997 Options Grant

122. Plaintiffs repeat, reallege and incorporate all of the allegations set forth above as if fully set forth herein.

123. The Director Defendants (except Shalala and Hemsley), as officers and/or directors of UNH, at all times relevant to this action, were fiduciaries of UNH and owed UNH the highest duties of good faith, due care, fair dealing, candor and loyalty.

124. The Director Defendants (except Mundinger, Shalala and Hemsley) have acted *ultra vires* by either delegating or improperly sharing authority to set the strike price of options to McGuire. McGuire also acted *ultra vires* in participating in the election of the grant date for his options.

125. The Director Defendants (except Shalala and Hemsley) have breached their fiduciary duty of care and loyalty by completely abdicating or improperly sharing their responsibility to set the strike price for the 1997 Options to an interested party.

126. The Director Defendants (except Shalala and Hemsley) have breached their fiduciary duty of candor by failing to disclose that they completely abdicated or improperly shared their responsibility to set the strike price for the 1997 Options to an interested party and that the interested party, McGuire, a fiduciary himself, had a secret

plan to set the strike price on a date that improperly benefited him the most, to the detriment of the Company.

127. McGuire additionally has breached his fiduciary duties of care and loyalty by controlling or improperly influencing a material term of an interested party transaction between himself and the Company (that is, the strike price of his own options), which term was not entirely fair to the Company.

128. Plaintiffs, on behalf of UNH, have no adequate remedy at law.

COUNT III

Breach of Fiduciary Duties Against the Director Defendants (Except Shalala and Hemsley) for the 1998 Options Grant

129. Plaintiffs repeat, reallege and incorporate all of the allegations set forth above as if fully set forth herein.

130. The Director Defendants (except Shalala and Hemsley), as officers and/or directors of UNH, at all times relevant to this action, were fiduciaries of UNH and owed UNH the highest duties of good faith, due care, fair dealing, candor and loyalty.

131. The Director Defendants (except Shalala and Hemsley) have acted *ultra vires* by either delegating or improperly sharing authority to set the strike price of options to McGuire. McGuire also acted *ultra vires* in participating in the election of the grant date for his options.

132. The Director Defendants (except Shalala and Hemsley) have breached their fiduciary duty of care and loyalty by completely abdicating or improperly sharing their responsibility to set the strike price for the 1998 Options to an interested party.

133. The Director Defendants (except Shalala and Hemsley) have breached their fiduciary duty of candor by failing to disclose that they completely abdicated or

improperly shared their responsibility to set the strike price for the 1998 Options to an interested party and that the interested party, McGuire, a fiduciary himself, had a secret plan to set the strike price on a date that improperly benefited him the most, to the detriment of the Company.

134. McGuire additionally has breached his fiduciary duties of care and loyalty by controlling or improperly influencing a material term of an interested party transaction between himself and the Company (that is, the strike price of his own options), which term was not entirely fair to the Company.

135. Plaintiffs, on behalf of UNH, have no adequate remedy at law.

COUNT IV

Breach of Fiduciary Duties Against the Director Defendants (Except Shalala and Hemsley) for the 1999 Options Grant

136. Plaintiffs repeat, reallege and incorporate all of the allegations set forth above as if fully set forth herein.

137. The Director Defendants (except Shalala and Hemsley), as officers and/or directors of UNH, at all times relevant to this action, were fiduciaries of UNH and owed UNH the highest duties of good faith, due care, fair dealing, candor and loyalty.

138. The Director Defendants (except Shalala and Hemsley) have acted *ultra vires* by either delegating or improperly sharing authority to set the strike price of options to McGuire. McGuire also acted *ultra vires* in participating in the election of the grant date for his options.

139. The Director Defendants (except Shalala and Hemsley) have breached their fiduciary duty of care and loyalty by completely abdicating or improperly sharing their responsibility to set the strike price for the 1999 Options to an interested party.

140. The Director Defendants (except Shalala and Hemsley) have breached their fiduciary duty of candor by failing to disclose that they completely abdicated or improperly shared their responsibility to set the strike price for the 1999 Options to an interested party and that the interested party, McGuire, a fiduciary himself, had a secret plan to set the strike price on a date that improperly benefited him the most, to the detriment of the Company.

141. McGuire additionally has breached his fiduciary duties of care and loyalty by controlling or improperly influencing a material term of an interested party transaction between himself and the Company (that is, the strike price of his own options), which term was not entirely fair to the Company.

142. Plaintiffs, on behalf of UNH, have no adequate remedy at law.

COUNT V

Breach of Fiduciary Duties Against the Director Defendants (Except Shalala) for the 2000 Options Grant

143. Plaintiffs repeat, reallege and incorporate all of the allegations set forth above as if fully set forth herein.

144. The Director Defendants (except Shalala), as officers and/or directors of UNH, at all times relevant to this action, were fiduciaries of UNH and owed UNH the highest duties of good faith, due care, fair dealing, candor and loyalty.

145. The Director Defendants (except Shalala) have acted *ultra vires* by either delegating or improperly sharing authority to set the strike price of options to McGuire. McGuire also acted *ultra vires* in participating in the election of the grant date for his options.

146. The Director Defendants (except Shalala) have breached their fiduciary duty of care and loyalty by completely abdicating or improperly sharing their responsibility to set the strike price for the 2000 Options to an interested party.

147. The Director Defendants (except Shalala) have breached their fiduciary duty of candor by failing to disclose that they completely abdicated or improperly shared their responsibility to set the strike price for the 2000 Options to an interested party and that the interested party, McGuire, a fiduciary himself, had a secret plan to set the strike price on a date that improperly benefited him the most, to the detriment of the Company.

148. McGuire additionally has breached his fiduciary duties of care and loyalty by controlling or improperly influencing a material term of an interested party transaction between himself and the Company (that is, the strike price of his own options), which term was not entirely fair to the Company.

149. Plaintiffs, on behalf of UNH, have no adequate remedy at law.

COUNT VI

Breach of Fiduciary Duties Against the Director Defendants (Except Shalala) for the 2001 Options Grant

150. Plaintiffs repeat, reallege and incorporate all of the allegations set forth above as if fully set forth herein.

151. The Director Defendants (except Shalala), as officers and/or directors of UNH, at all times relevant to this action, were fiduciaries of UNH and owed UNH the highest duties of good faith, due care, fair dealing, candor and loyalty.

152. The Director Defendants (except Shalala) have acted *ultra vires* by either delegating or improperly sharing authority to set the strike price of options to McGuire.

McGuire also acted *ultra vires* in participating in the election of the grant date for his options.

153. The Director Defendants (except Shalala) have breached their fiduciary duty of care and loyalty by completely abdicating or improperly sharing their responsibility to set the strike price for the 2001 Options to an interested party.

154. The Director Defendants (except Shalala) have breached their fiduciary duty of candor by failing to disclose that they completely abdicated or improperly shared their responsibility to set the strike price for the 2001 Options to an interested party and that the interested party, McGuire, a fiduciary himself, had a secret plan to set the strike price on a date that improperly benefited him the most, to the detriment of the Company.

155. McGuire additionally has breached his fiduciary duties of care and loyalty by controlling or improperly influencing a material term of an interested party transaction between himself and the Company (that is, the strike price of his own options), which term was not entirely fair to the Company.

156. Plaintiffs, on behalf of UNH, have no adequate remedy at law.

COUNT VII

Breach of Fiduciary Duties Against the Director Defendants for the 2002 Options Grant

157. Plaintiffs repeat, reallege and incorporate all of the allegations set forth above as if fully set forth herein.

158. The Director Defendants, as officers and/or directors of UNH, at all times relevant to this action, were fiduciaries of UNH and owed UNH the highest duties of good faith, due care, fair dealing, candor and loyalty.

159. The Director Defendants, have acted *ultra vires* by either delegating or improperly sharing authority to set the strike price of options to McGuire. McGuire also acted *ultra vires* in participating in the election of the grant date for his options.

160. The Director Defendants have breached their fiduciary duty of care and loyalty by completely abdicating or improperly sharing their responsibility to set the strike price for the 2002 Options to an interested party.

161. The Director Defendants have breached their fiduciary duty of candor by failing to disclose that they completely abdicated or improperly shared their responsibility to set the strike price for the 2002 Options to an interested party and that the interested party, McGuire, a fiduciary himself, had a secret plan to set the strike price on a date that improperly benefited him the most, to the detriment of the Company. Indeed, because the 2002 Plan prevents McGuire from selecting the strike date for his options, the Director Defendants breached their duty of candor for failing to disclose that the right under his employment agreement continued despite clear language in the 2002 Plan to the contrary.

162. McGuire additionally has breached his fiduciary duties of care and loyalty by controlling or improperly influencing a material term of an interested party transaction between himself and the Company (that is, the strike price of his own options), which term was not entirely fair to the Company.

163. Plaintiffs, on behalf of UNH, have no adequate remedy at law.

COUNT VIII

Breach of Fiduciary Duties Against the Director Defendants for the 2003 Options Grant

164. Plaintiffs repeat, reallege and incorporate all of the allegations set forth above as if fully set forth herein.

165. The Director Defendants, as officers and/or directors of UNH, at all times relevant to this action, were fiduciaries of UNH and owed UNH the highest duties of good faith, due care, fair dealing, candor and loyalty.

166. The Director Defendants, have acted *ultra vires* by either delegating or improperly sharing authority to set the strike price of options to McGuire. McGuire also acted *ultra vires* in participating in the election of the grant date for his options.

167. The Director Defendants have breached their fiduciary duty of care and loyalty by completely abdicating or improperly sharing their responsibility to set the strike price for the 2003 Options to an interested party.

168. The Director Defendants have breached their fiduciary duty of candor by failing to disclose that they completely abdicated or improperly shared their responsibility to set the strike price for the 2003 Options to an interested party and that the interested party, McGuire, a fiduciary himself, had a secret plan to set the strike price on a date that improperly benefited him the most, to the detriment of the Company. Indeed, because the 2002 Plan prevents McGuire from selecting the strike date for his options, the Director Defendants breached their duty of candor for failing to disclose that the right under his employment agreement continued despite clear language in the 2002 Plan to the contrary.

169. McGuire additionally has breached his fiduciary duties of care and loyalty by controlling or improperly influencing a material term of an interested party transaction between himself and the Company (that is, the strike price of his own options), which term was not entirely fair to the Company.

170. Plaintiffs, on behalf of UNH, have no adequate remedy at law.

COUNT IX

Breach of Fiduciary Duties Against the Director Defendants for the 2004 Options Grant

171. Plaintiffs repeat, reallege and incorporate all of the allegations set forth above as if fully set forth herein.

172. The Director Defendants, as officers and/or directors of UNH, at all times relevant to this action, were fiduciaries of UNH and owed UNH the highest duties of good faith, due care, fair dealing, candor and loyalty.

173. The Director Defendants, have acted *ultra vires* by either delegating or improperly sharing authority to set the strike price of options to McGuire. McGuire also acted *ultra vires* in participating in the election of the grant date for his options.

174. The Director Defendants have breached their fiduciary duty of care and loyalty by completely abdicating or improperly sharing their responsibility to set the strike price for the 2004 Options to an interested party.

175. The Director Defendants have breached their fiduciary duty of candor by failing to disclose that they completely abdicated or improperly shared their responsibility to set the strike price for the 2004 Options to an interested party and that the interested party, McGuire, a fiduciary himself, had a secret plan to set the strike price on a date that improperly benefited him the most, to the detriment of the Company.

Indeed, because the 2002 Plan prevents McGuire from selecting the strike date for his options, the Director Defendants breached their duty of candor for failing to disclose that the right under his employment agreement continued despite clear language in the 2002 Plan to the contrary.

176. McGuire additionally has breached his fiduciary duties of care and loyalty by controlling or improperly influencing a material term of an interested party transaction between himself and the Company (that is, the strike price of his own options), which term was not entirely fair to the Company.

177. Plaintiffs, on behalf of UNH, have no adequate remedy at law.

COUNT X

Breach of Fiduciary Duties Against the Director Defendants for the 2005 Options Grant

178. Plaintiffs repeat, reallege and incorporate all of the allegations set forth above as if fully set forth herein.

179. The Director Defendants, as officers and/or directors of UNH, at all times relevant to this action, were fiduciaries of UNH and owed UNH the highest duties of good faith, due care, fair dealing, candor and loyalty.

180. The Director Defendants, have acted *ultra vires* by either delegating or improperly sharing authority to set the strike price of options to McGuire. McGuire also acted *ultra vires* in participating in the election of the grant date for his options.

181. The Director Defendants have breached their fiduciary duty of care and loyalty by completely abdicating or improperly sharing their responsibility to set the strike price for the 2005 Options to an interested party.

182. The Director Defendants have breached their fiduciary duty of candor by failing to disclose that they completely abdicated or improperly shared their responsibility to set the strike price for the 2005 Options to an interested party and that the interested party, McGuire, a fiduciary himself, had a secret plan to set the strike price on a date that improperly benefited him the most, to the detriment of the Company. Indeed, because the 2002 Plan prevents McGuire from selecting the strike date for his options, the Director Defendants breached their duty of candor for failing to disclose that the right under his employment agreement continued despite clear language in the 2002 Plan to the contrary.

183. McGuire additionally has breached his fiduciary duties of care and loyalty by controlling or improperly influencing a material term of an interested party transaction between himself and the Company (that is, the strike price of his own options), which term was not entirely fair to the Company.

184. Plaintiffs, on behalf of UNH, have no adequate remedy at law.

COUNT XI

Against the Director Defendants for Abuse of Control

185. Plaintiffs repeat, reallege and incorporate all of the allegations set forth above as if fully set forth herein.

186. The Director Defendants' misconduct alleged herein constituted an abuse of their ability to control and influence UNH, for which they are legally responsible.

187. As a direct and proximate result of the Director Defendants' abuse of control, UNH has sustained significant damages.

188. As a result of the misconduct alleged herein, the Director Defendants are liable to the Company.

189. Plaintiffs, on behalf of UNH, have no adequate remedy at law.

COUNT XII

Against the Director Defendants for Gross Mismanagement

190. Plaintiffs repeat, reallege and incorporate all of the allegations set forth above as if fully set forth herein.

191. By their actions alleged herein, the Director Defendants, either directly or through aiding and abetting, abandoned and abdicated their responsibilities and fiduciary duties with regard to prudently managing the assets and business of UNH in a manner consistent with the operations of a publicly held corporation.

192. As a direct and proximate result of the Director Defendants' gross mismanagement and breaches of duty alleged herein, UNH has sustained significant damages.

193. As a result of the misconduct and breaches of duty alleged herein, the Director Defendants are liable to the Company.

194. Plaintiffs, on behalf of UNH, have no adequate remedy at law.

COUNT XIII

Against All Defendants for Waste of Corporate Assets

195. Plaintiffs repeat, reallege and incorporate all of the allegations set forth above as if fully set forth herein.

196. As a result of the improprieties alleged herein, and by failing to properly consider the interests of the Company and its public shareholders by failing to conduct

proper supervision, defendants have caused UNH to waste valuable corporate assets and incur costs to conduct investigations, hire outside counsel, accounting firms and consultants, and to direct manpower to the task of restating UNH's past financials to correct for the improperly backdated stock option grants.

197. As a result of the waste of corporate assets, the Director Defendants are liable to the Company.

198. Plaintiffs, on behalf of UNH, have no adequate remedy at law.

COUNT XIV

Against All Defendants for Unjust Enrichment

199. Plaintiffs repeat, reallege and incorporate all of the allegations set forth above as if fully set forth herein.

200. By their wrongful acts and omissions, defendants were unjustly enriched at the expense of and to the detriment of UNH.

201. Plaintiffs, as a shareholders and representatives of UNH, seek restitution from these defendants, and each of them, and seeks an order of this Court disgorging all profits, benefits and other compensation obtained by these defendants, and each of them, for their wrongful conduct and fiduciary breaches.

202. Plaintiffs, on behalf of UNH, have no adequate remedy at law.

COUNT XV

Against All Defendants for an Accounting

203. Plaintiffs repeat, reallege and incorporate all of the allegations set forth above as if fully set forth herein.

204. At all relevant times, the defendants, as directors and/or officers of UNH, owed the Company and its shareholders fiduciary duties of good faith, care, candor and loyalty.

205. In breach of their fiduciary duties owed to UNH and its shareholders, the defendants authorized the granting of backdated-UNH stock options to themselves and/or certain other UNH insiders. By this wrongdoing, the defendants breached their fiduciary duties owed to UNH and its shareholders and violated applicable law.

206. The defendants possess complete and unfettered control over their improperly issued stock option grants and the books and records of the Company concerning the details of such improperly backdated stock option grants to the defendants.

207. As a result of defendants' misconduct, UNH has been substantially injured and damaged financially and is entitled to a recovery as a result thereof, including the proceeds of those improperly granted options which have been exercised and sold.

208. Plaintiffs demand an accounting be made of all stock options grants made to defendants, including, without limitation, the dates of the grants, the amounts of the grants, the value of the grants, the recipients of the grants, the exercise date of stock options granted to the defendants, as well as the disposition of any proceeds received by

the defendants via sale or other exercise of backdated stock option grants received by the defendants.

COUNT XVI

Against All Defendants for Rescission

209. Plaintiffs repeat, reallege and incorporate all of the allegations set forth above as if fully set forth herein.

210. As a result of the acts alleged herein, the stock option contracts between the Defendants and UNH entered into during the relevant period were obtained through defendants' breaches of fiduciary duties, unjust enrichment, gross mismanagement and abuse of control. Further, the backdated stock options were illegal grants and thus invalid because defendants authorized these options in breach of the terms of the publicly filed contracts regarding the Defendants' employment agreements and the Company's stock option plans, which were also approved by UNH shareholders and filed with the SEC, and in violation of applicable law.

211. All contracts which provide for stock option grants between the Defendants and UNH and were entered into during times relevant hereto should, therefore, be rescinded, with all sums paid under such contracts returned to the Company, and all such executory contracts cancelled and declared void.

COUNT XVII

Against All Defendants for Constructive Trust

212. Plaintiffs repeat, reallege and incorporate all of the allegations set forth above as if fully set forth herein.

213. As a result of the acts alleged herein, defendants authorized the grant of backdated or otherwise manipulated equity based compensation to themselves and other UNH insiders. In effect, these backdated options and other manipulated equity or incentive based compensation constitutes illegal compensation in violation of UNH's stock option plans, employment contracts and other compensation polices and applicable law.

214. The Company has a right for the return of this compensation because it was illegally authorized by the defendants and paid out of the Company's assets.

215. Defendants and other UNH insiders profited from the illegally backdated options by wrongful acts.

216. Accordingly, plaintiffs seek a declaratory judgment that the illicit stock options, and all proceeds derived from exercise thereof and any assets or other property acquired in connection therewith, are and have been held in constructive trust for the company's benefit from the true grant date of the manipulated stock options and other equity or incentive based compensation.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs, on behalf of UNH, demand judgment as follows:

A. Against all of the Director Defendants and in favor of the Company for the amount of damages sustained by the Company as a result of the Director Defendants' breaches of fiduciary duties, abuse of control, gross mismanagement, waste of corporate assets and unjust enrichment;

B. Directing UNH to take all necessary actions to reform and improve their corporate governance and internal procedures to comply with applicable laws and to protect UNH and its shareholders from a repitition of the damaging events described herein, including, but not limited to, rescinding the 2002 Plan and putting forward for shareholder vote resolutions for amendments to the companies' By-Laws or Articles of Incorporation and taking such other action as may be necessary to place before shareholders for a vote for Corporate Governance Policies that include (i) a proposal to strengthen the Boards' supervision of operations and develop and implement procedures for greater shareholder input into the policies and guidelines of the Board; (ii) a provision to permit the shareholders of UNH to nominate at least three candidates for election to the Board; and (iii) tests to strengthen the internal audit and control functions;

C. Extraordinary equitable and/or injunctive relief as permitted by law, equity and state statutory provisions sued hereunder, including attaching, impounding, imposing a constructive trust on or otherwise restricting the proceeds of defendants' trading activities or their other assets so as to assure that plaintiff on behalf of UNH has an effective remedy;

D. Pursuant to Minn. Stat. § 302A.467, for the violations of Minn. Stat. §§ Minn. Stat. § 302A.001 *et seq.* alleged herein, such equitable relief as the court deems just and reasonable in the circumstances and award expenses, including attorneys' fees and disbursements, to the shareholder;

E. Awarding to UNH restitution from the defendants, and each of them, and ordering disgorgement of all profits, benefits and other compensation obtained by the defendants;

F. Awarding to plaintiffs the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

G. Granting such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiffs demand a trial by jury for all issues triable of right by a jury.

Dated: August 14, 2005

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