

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

ST. PAUL TEACHERS' RETIREMENT	)	Civ. No.
FUND ASSOCIATION, PUBLIC)	
EMPLOYEES' RETIREMENT SYSTEM)	
OF MISSISSIPPI, JACKSONVILLE)	
POLICE & FIRE PENSION FUND,)	
LOUISIANA MUNICIPAL POLICE)	
EMPLOYEES' RETIREMENT SYSTEM)	
and LOUISIANA SHERIFFS' PENSION &)	
RELIEF FUND, Derivatively on Behalf of)	
Nominal Defendant UNITEDHEALTH	)	VERIFIED DERIVATIVE COMPLAINT
GROUP, INC.,	)	FOR VIOLATION OF SECTION 10(b)
	)	OF THE SECURITIES EXCHANGE ACT
Plaintiffs,	)	AND RULE 10b-5, BREACH OF
	)	FIDUCIARY DUTY, AIDING AND
vs.	)	ABETTING A BREACH OF FIDUCIARY
	)	DUTY, UNJUST ENRICHMENT AND
	)	RECISSION
WILLIAM W. MCGUIRE, STEPHEN J.)	
HEMSLEY, DAVID J. LUBBEN, R.)	
CHANNING WHEELER, JEANNINE M.)	
RIVET, DAVID P. KOPPE, JAMES G.)	
CARLSON, ROBERT J. SHEEHY,	)	<u>DEMAND FOR JURY TRIAL</u>
WILLIAM C. BALLARD, JR., RICHARD)	
T. BURKE, JAMES A. JOHNSON,)	
THOMAS H. KEAN, DOUGLAS W.)	
LEATHERDALE, MARY O.)	
MUNDINGER, ROBERT L. RYAN,)	
WILLIAM G. SPEARS and GAIL R.)	
WILENSKY,)	
)	
Defendants,)	
)	
- and -)	
)	
UNITEDHEALTH GROUP INC., a)	
Minnesota Corporation,)	
)	
Nominal Defendant.)	
)	

NATURE OF THE ACTION

1. Plaintiffs St. Paul Teachers' Retirement Fund Association, Public Employees' Retirement System of Mississippi, Jacksonville Police & Fire Pension Fund, Louisiana Municipal Police Employees' Retirement System and Louisiana Sheriffs' Pension & Relief Fund, by their undersigned attorneys, submit this Verified Derivative Complaint. This is a shareholders' derivative action brought in the name and for the benefit of nominal defendant UnitedHealth Group, Inc. ("UnitedHealth or the "Corporation") against certain current and former executive officers and members of the Board of Directors of UnitedHealth. The action arises from defendants' obtaining, approving, and/or acquiescing in the issuance of stock options to senior executives that were unlawfully backdated to provide the recipients with windfall compensation at the direct expense of UnitedHealth.

2. William W. McGuire ("McGuire") would have us believe that he is the luckiest man in corporate America. As Chairman and Chief Executive Officer ("CEO") of UnitedHealth, he and Stephen J. Hemsley ("Hemsley")—a director of the Corporation, as well as its President and Chief Operating Officer ("COO")—along with other current and former executives of the Corporation, purport to have received UnitedHealth stock options during the 1990s and the early part of this decade at abnormally low and statistically anomalous exercise prices. During at least between 1997 to 2002, McGuire and/or Hemsley somehow managed to receive stock option grants on the *single lowest trading day of the year four years in a row*, and within pennies of that low on the other two years. The lower the exercise price of a stock option, the more profitable it is for the grantee, and the favorable time-pattern of these grants proved extraordinarily profitable to

these grantees. As of the end of last year, McGuire and Hemsley had between them amassed over \$2 billion in compensation from as of yet unexercised UnitedHealth stock options.

3. In fact, McGuire's, Hemsley's and other UnitedHealth executives' receipt of these options was obtained only by means of the defendants' breach of fiduciary duty and violation of law. Stock option grants to UnitedHealth executives were at all relevant times required to carry an exercise price that was not less than the fair market value of UnitedHealth stock on the date of grant and issuance, as measured by the public trading price of the stock at the market's close on that date. Nevertheless, throughout the relevant period, stock option grants to McGuire, Hemsley, and other UnitedHealth executives were repeatedly backdated to grant dates on which the stock price was at an especially low point during the quarter or fiscal year period. The claimed dates of grant were untrue, and the options were actually granted on later dates and, with the benefit of hindsight, falsely ascribed to earlier, more favorable dates. Backdating stock option grants to obtain beneficial exercise prices is akin to picking lottery numbers on the day after the winning numbers are reported in the news. It is a riskless and unlawful exercise that unjustly appropriates corporate assets and benefits no one other than the grantee. Accordingly, all of the now unexercised options should be immediately cancelled and all of the financial gains to the recipients who exercised such options should be returned to the Corporation. Further, the Corporation's directors who administered and determined to grant these options utterly failed to fulfill their fiduciary duties to the Corporation and they too are accountable for that failure.

4. Backdating is the only conceivable explanation for the remarkable pattern

of options grants to UnitedHealth executives during the relevant period. Indeed, the results of a statistical analysis of the grants to McGuire and Hemsley recently published in *The Wall Street Journal* concluded that the chances of their grants actually occurring as claimed were 1 in 200 million. The statistics leave no doubt that stock option grants to UnitedHealth executives during the relevant period were backdated and that, as a result, these executives were unjustly enriched and the Corporation was deceived and harmed by defendants' actions.

5. The Individual Defendants' abject failures with respect to option backdating are merely one aspect – albeit the most egregious one – in their abdication of their fiduciary responsibilities with respect to the determination of the executive compensation of the senior executives of UnitedHealth. As of December 2005, for example, Defendants McGuire and Hemsley had obtained stock options with a total value greater than \$2 billion. This figure is far in excess of any arguably reasonable sum and far beyond the executive packages that have been roundly criticized in recent years.

6. This action, on behalf of the Corporation, seeks to remedy the harms caused to UnitedHealth by the backdating scheme and, in addition, to invalidate and nullify all executory options contracts issued pursuant to the scheme. Defendants violated Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), and Rule 10b-5 promulgated thereunder, by participating in the backdating of stock options. By means of the backdating scheme, defendants caused the issuance of options bearing fraudulently low exercise prices to McGuire, Hemsley, and other UnitedHealth executives. Defendants also breached their duties as fiduciaries of the Corporation. Defendants owed UnitedHealth duties of care, undivided loyalty, good faith, and truthful

disclosure. The Officer Defendants and the Non-Management Director Defendants (both defined below) breached these duties by obtaining, approving, and/or acquiescing in the issuance of backdated stock options to UnitedHealth executives. The Officer Defendants were unjustly enriched by virtue of receiving fraudulently priced stock option grants. The Non-Management Director Defendants—and in particular the members of the Compensation and Human Resources Committee¹ (the “Compensation Committee”)—by authorizing, approving and/or acquiescing in the issuance of backdated stock options to the Officer Defendants, aided and abetted the Officer Defendants’ breach of fiduciary duty, and, in particular, the Officer Defendants’ duties of undivided loyalty to the Corporation.

PARTIES

7. Plaintiff St. Paul Teachers’ Retirement Fund Association is a defined-benefit pension fund for public school teachers in St. Paul, Minnesota. Plaintiff St. Paul Teachers’ Retirement Fund Association currently owns 38,760 shares of UnitedHealth common stock.

8. Plaintiff Public Employees’ Retirement System of Mississippi provides retirement benefits to all non-federal employees in the State of Mississippi. Public Employees’ Retirement System of Mississippi currently owns 1,035,530 shares of UnitedHealth common stock.

9. Plaintiff Jacksonville Police & Fire Pension Fund is a defined-benefit pension fund for police officers and firefighters in Jacksonville, Florida. Plaintiff Jacksonville Police & Fire Pension Fund currently owns 14,100 shares of UnitedHealth

¹ The Compensation and Human Resources Committee was known as the Compensation and Stock Option Committee until 1999.

common stock.

10. Plaintiff Louisiana Municipal Police Employees' Retirement System is a defined-benefit pension fund for police officers in the State of Louisiana. Plaintiff Louisiana Municipal Police Employees' Retirement System currently owns 48,248 shares of UnitedHealth common stock.

11. Plaintiff Louisiana Sheriffs' Pension & Relief Fund is a defined-benefit pension fund for sheriffs in the State of Louisiana with \$1.16 billion in net assets as of April 30, 2006. Plaintiff Louisiana Sheriffs' Pension & Relief Fund currently owns 43,850 shares of UnitedHealth common stock.

12. Plaintiffs St. Paul Teachers' Retirement Fund Association, Public Employees' Retirement System of Mississippi, Jacksonville Police & Fire Pension Fund, Louisiana Municipal Police Employees' Retirement System, and Louisiana Sheriffs' Pension & Relief Fund are referred to collectively in this Complaint as the "Plaintiffs."

13. Nominal Defendant UnitedHealth Group Incorporated is a Minnesota corporation with its principal executive offices and place of business located at 9900 Bren Road East, Minnetonka, Minnesota. UnitedHealth is a diversified health care company, which offers healthcare benefit plans, health care benefits management, data and information services, drug development and marketing services, and specialized care services, through six operating subsidiaries.

14. Defendant William W. McGuire ("McGuire") is the Chairman of the Board of Directors and CEO of the Corporation, positions he has held since 1991. McGuire joined the Company as Executive Vice President in November 1988 and served as COO from May 1989 to June 1995 and as President from November 1989 until May

1999. As an executive and a member of the Board of Directors, he authorized, approved and received the backdated stock option grants at issue in this case. During fiscal 2005, Defendant McGuire received \$2.2 million in salary and \$5.8 million in bonus.

15. Defendant Stephen J. Hemsley (“Hemsley”) is the Chief Operating Officer and President of the Corporation as well as a director. Hemsley has served as Chief Operating Officer since 1998 and President since 1999. He has been a member of the Board of Directors since 2000. As an executive and a member of the Board of Directors, he authorized, approved and received the backdated stock option grants at issue in this case. During fiscal 2005, Defendant Hemsley received \$1 million in salary and \$2.4 million in bonus.

16. Defendant David J. Lubben (“Lubben”) is Secretary and General Counsel of the Corporation, positions he has held since 1996. As alleged herein, Defendant Lubben received the backdated stock option grants at issue in this case.

17. Defendant Jeannine M. Rivet (“Rivet”) has served as an executive officer of the Corporation and/or one or more of its subsidiaries during the relevant period. Since 2000, Rivet has been the Executive Vice President of UnitedHealth Group, a subsidiary of the Corporation. As alleged herein, Defendant Rivet received the backdated stock option grants at issue in this case.

18. Defendant Robert J. Sheehy (“Sheehy”) has served as an executive officer of the Corporation since 1992. Currently, Sheehy is the Chief Executive Officer of UnitedHealthcare. As alleged herein, Defendant Sheehy received the backdated stock option grants at issue in this case.

19. Defendant R. Channing Wheeler (“Wheeler”) is a former executive officer

of the Corporation. As alleged herein, Defendant Wheeler received the backdated stock option grants at issue in this case.

20. Defendant David P. Koppe (“Koppe”) served as Chief Financial Officer of the Corporation from 1994 to 1998. As alleged herein, Defendant Koppe received the backdated stock option grants at issue in this case.

21. Defendant James G. Carlson (“Carlson”) served as an executive officer of the Corporation from 1995 to 1997. As alleged herein, Defendant Carlson received the backdated stock option grants at issue in this case.

22. Defendants McGuire, Hemsley, Lubben, Wheeler, Rivet, Koppe, Carlson, and Sheehy are referred to collectively in this Complaint as the “Officer Defendants.”

23. Defendant William C. Ballard, Jr. (“Ballard”) became a director of the Corporation in 1993. He was a member of the Compensation Committee from 1996-1998 and the Audit Committee from 1999 - 2002. As a member of the Board of Directors and the Compensation Committee, he authorized and approved of the backdated stock option grants at issue in this case. As a member of the Audit Committee, Defendant Ballard also approved the Corporation’s false financial disclosures, as alleged herein. Defendant Ballard is currently a member of the Board of Directors and the Audit Committee.

24. Defendant Richard T. Burke (“Burke”) was the CEO of UnitedHealth until 1988. He became a director at the Corporation’s inception in 1977. As a member of the Board of Directors, he authorized and approved of the backdated stock option grants at issue in this case. Defendant Burke is currently a member of the Board of Directors.

25. Defendant James A. Johnson (“Johnson”) has been a director since 1993. He was a member of the Audit Committee from 1996-2002. As a member of the Board

of Directors, he authorized and approved of the backdated stock option grants at issue in this case. As a member of the Audit Committee, Defendant Johnson also approved the Corporation's false financial disclosures, as alleged herein. Defendant Johnson is currently a member of the Board of Directors and Chairman of the Compensation Committee.

26. Defendant Thomas H. Kean ("Kean") has been a director since 1993. He was a member of the Compensation Committee from 1996-2002. As a member of the Board of Directors and the Compensation Committee, he authorized and approved of the backdated stock option grants at issue in this case. Defendant Kean is currently a member of the Board of Directors and the Audit Committee.

27. Defendant Douglas W. Leatherdale ("Leatherdale") became a director of the Corporation in 1983. He served as Chairman of the Audit Committee from 1996-2002. As a member of the Board of Directors, he authorized and approved of the backdated stock option grants at issue in this case. As a member of the Audit Committee, Defendant Leatherdale also approved the Corporation's false financial disclosures, as alleged herein. Leatherdale is currently a member of the Board of Directors and the Audit Committee.

28. Defendant Mary O. Munding ("Munding") became a member of the Board of Directors in 1997. She served as a member of the Compensation Committee from 1997-2002. As a member of the Board of Directors and the Compensation Committee, she authorized and approved of the backdated stock option grants at issue in this case. Munding is currently a member of the Board of Directors and the Compensation Committee.

29. Defendant Robert L. Ryan (“Ryan”) became a director of the Corporation in 1996. He was as a member of the Compensation Committee from 1996-1998 and a member of the Audit Committee from 1999-2002. As a member of the Board of Directors, he authorized and approved of the backdated stock option grants at issue in this case. As a member of the Audit Committee, Defendant Ryan also approved the Corporation’s false financial disclosures, as alleged herein. Ryan is currently a member of the Board of Directors.

30. Defendant William G. Spears (“Spears”) became a director of the Corporation in 1991. He served as Chairman of the Compensation Committee from 1996-2002. As a member of the Board of Directors and the Compensation Committee, he authorized and approved of the backdated stock option grants at issue in this case. Spears is currently a member of the Board of Directors and the Compensation Committee.

31. Defendant Gail R. Wilensky (“Wilensky”) joined the Board of Directors in 1993. She was a member of the Audit Committee from 1996-1998. As a member of the Board of Directors she authorized and approved of the backdated stock option grants at issue in this case. As a member of the Audit Committee, Defendant Wilensky also approved the Corporation’s false financial disclosures, as alleged herein. Wilensky is currently a member of the Board of Directors.

32. Defendants Ballard, Burke, Johnson, Kean, Leatherdale, Munding, Ryan, Spears and Wilensky are referred to collectively in this Complaint as the “Non-Management Director Defendants.”

33. The Officer Defendants and Non-Management Director Defendants are

referred to collectively herein as the “Individual Defendants.”

JURISDICTION AND VENUE

34. This Court has jurisdiction over this action under 28 U.S.C. § 1331, because this is a civil action arising under the laws of the United States. This Court also has exclusive jurisdiction over this action pursuant to Section 27 of the Securities Exchange Act, 15 U.S.C. §§ 78aa, because this action asserts claims under that Act and rules promulgated thereunder. This Court has supplemental jurisdiction over the non-federal claims asserted herein under 28 U.S.C. § 1367.

35. Venue is proper in this District because nominal defendant UnitedHealth is a Minnesota corporation and is headquartered in this District and thus a substantial portion of the transactions and wrongs complained of herein, including the defendants’ primary participation in the wrongful acts detailed herein, occurred in this District. One or more of the defendants either resides in or maintains executive offices in this District.

FACTUAL ALLEGATIONS

36. Defendants McGuire and Hemsley, along with the other Officer Defendants, purportedly received grants of stock options from the Corporation on unusually favorable dates during at least the period of 1997 through 2002. These stock options were claimed to have been granted at or near the stock’s annual low, or immediately after a substantial dip in the stock price followed by a substantial run-up. Analysis of this seemingly fortuitous pattern of stock option grants reveals that the pattern could not have resulted innocently. Rather, the only possible explanation is that these stock options grants were, in fact, *backdated* to allow the options’ recipients to enjoy the largest possible returns at the expense of the Corporation.

37. A stock option is a right to purchase a particular stock at a fixed price, called the “exercise” or “strike” price. When the stock’s market price exceeds the strike price, the option holder may purchase the stock at the exercise price and resell it at the higher market price, pocketing the difference. The lower the strike price of the option, the larger the sum obtained when the option is exercised.

38. At all relevant times, stock option grants to the Officer Defendants were required to carry a strike price not less than the publicly traded closing price of the stock on the date of grant. All executive compensation stock options to the Officer Defendants during the relevant period were issued pursuant to the United Healthcare Corporation Amended and Restated 1991 Stock Incentive Plan, Amended and Restated Effective May 14, 1997 (the “Plan”). The Plan specifically provides that:

The option price for all Incentive Stock Options granted under the Plan shall be determined by the 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. . . . For purposes of the preceding sentence and all other valuation purposes under the Plan, the fair market value of the Common Shares shall be as reasonably determined by the Committee, but ***shall not be less than the closing price of the stock on the date for which fair market value is being determined***, as reported on any national securities exchange on which the Common Shares are then traded.

(Emphasis added).

39. This requirement that stock options be priced on the date of grant was also set forth in numerous other agreements that were attached to the Corporation’s SEC filings. For example, Defendant McGuire’s employment agreement dated January 1, 1996 (attached to the Corporation’s Form 10-K for the year ended December 31, 1995 as exhibit 10(b)) stated that the exercise price of options shall be “the fair market value of

shares of United Common Stock at the time of the grant as determined by the Board of Directors.” Similarly, McGuire’s employment agreement dated October 13, 1999 (attached to the Corporation’s Form 10-K for the year ended December 31, 1999 as exhibit 10(f)) stated that “[t]he exercise price for the Annual Options shall be the closing price for UnitedHealth Group Common Stock on the date of issuance.” Defendant Hemsley’s employment agreement dated October 13, 1999 (attached to the Corporation’s Form 10-K for the year ended December 31, 1999 as exhibit 10(g)) likewise required that “[t]he exercise price for each share of common stock underlying the Annual Options shall be the fair market value of one share of UnitedHealth Group Common Stock at the time of the grant.” The employment agreements of the other Officer Defendants all contain the same restriction. The requirement that executive compensation stock options be priced on the date of grant was also set forth in all the Corporation’s annual proxy statements during the relevant period.

40. It is now evident that the Individual Defendants did not comply with the requirement that stock options granted to the Officer Defendants be priced on the date of grant or issuance. The multi-year pattern of stock option grants on dates with highly favorable exercise prices—invariably at historic stock price lows or right before a large stock price run-up—indicates that the purported grant dates of the stock options were not the actual dates on which the options grants were made. Rather, the pattern indicates that grants to executives were repeatedly backdated to dates with exceedingly low stock prices.

41. Statistical analysis conducted by *The Wall Street Journal* demonstrates that it is virtually impossible that the pattern of grants to McGuire and Hemsley occurred

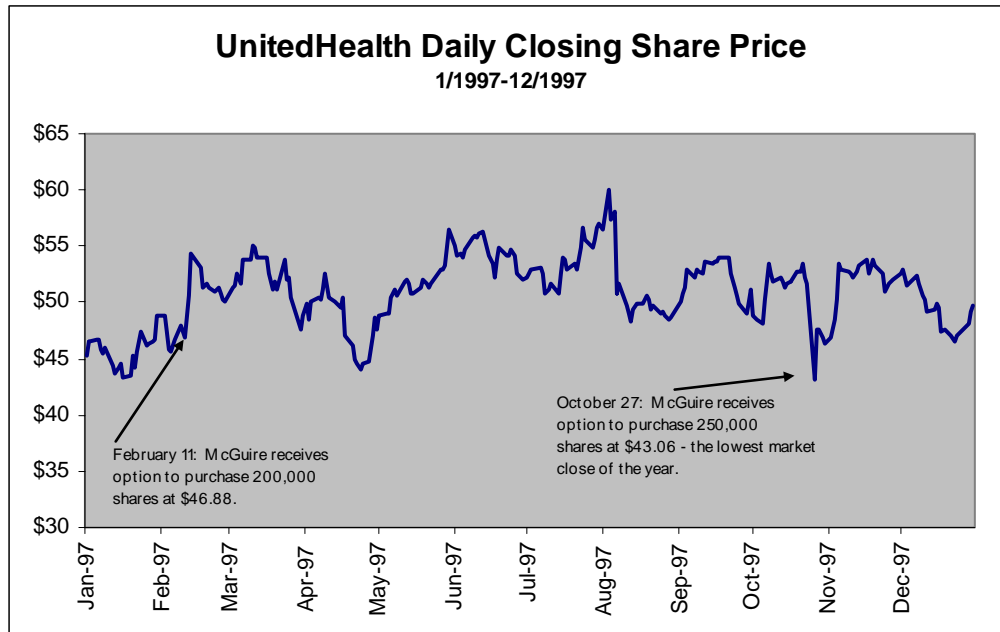
randomly. On March 18, 2006, *The Wall Street Journal* concluded that the odds of the pattern of grants received by McGuire and Hemsley occurring by chance were 1 in 200 million, odds described as “astronomical.”² In comparison, the newspaper noted that the “odds of winning the multi-state Powerball lottery with a \$1 ticket are one in 146 million.” Only by backdating the stock option grants—reviewing the share price in hindsight and retrospectively identifying the low points—could the Individual Defendants have achieved this highly suspicious pattern of grants. The practice is the equivalent of placing a wager on a horse race after the race has already been won and the identity of the winning horse is known to all.

42. A review of the option grants received by McGuire and Hemsley during this period supports this conclusion:

(a) During 1997, the public trading price of UnitedHealth common stock ranged from \$43.06 to \$60.00³ per share, with an average closing price of \$50.87. Defendant McGuire received two stock option grants during 1997. The first was a grant, purportedly on February 11, 1997, of an option to purchase 200,000 shares with an exercise price of \$46.88. The stock closed four dollars higher at \$50.88 only ten days later. The second grant, purportedly on October 27, 1997, was an option to purchase 250,000 shares with an exercise price of \$43.06—the lowest market close for the entire year. A graph demonstrating the timing of these grants is set forth below:

² The methodology employed in the analysis was described in a companion article of the same date.

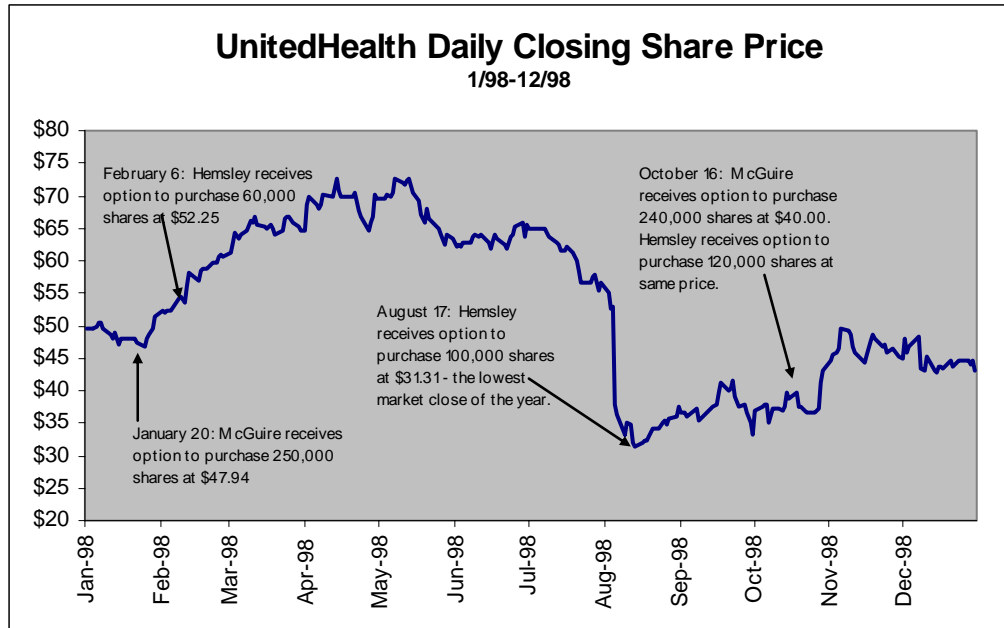
³ All UnitedHealth share prices referenced herein are not adjusted for stock splits or dividends.



As a result of this backdating, McGuire obtained instant and illegitimate multimillion dollar profits during 1997.

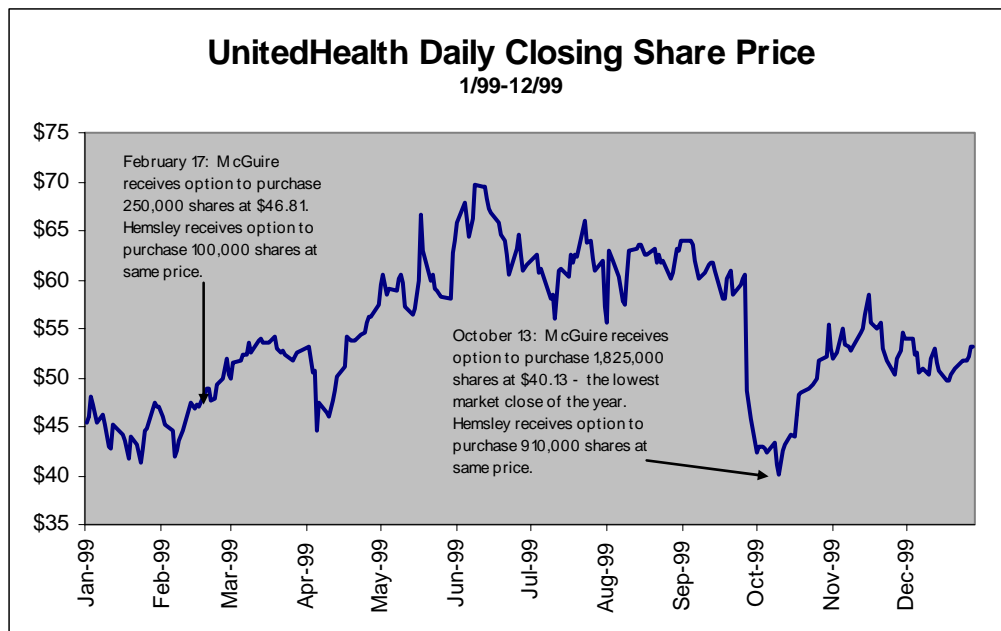
(b) During 1998, the public trading price of UnitedHealth common shares ranged from \$31.31 to \$72.75 per share, with an average closing price of \$52.95. Defendant McGuire received two stock option grants during 1998. McGuire's first 1998 grant, purportedly on January 20, 1998, was an option to purchase 250,000 shares with an exercise price of \$47.94. The stock closed at \$52.13 only ten days later. McGuire's second 1998 grant, purportedly on October 16, 1998, was an option to purchase 240,000 shares with an exercise price of \$40.00. Defendant Hemsley received three stock option grants during 1998. Hemsley's first grant in 1998, purportedly on February 6, 1998, was an option to purchase 60,000 shares with an exercise price of \$52.25. The stock closed over seven dollars higher only ten days later. Hemsley's second 1998 grant, purportedly on August 17, 1998 was an option to purchase 100,000 shares with an

exercise price of \$31.31—the lowest market close for the entire year. The stock closed three dollars higher ten days later. Hemsley’s third grant in 1998, purportedly on October 16, 1998, was an option to purchase 120,000 shares with an exercise price of \$40.00. A graph demonstrating the timing of these grants is set forth below:



As a result of this backdating, McGuire and Hemsley obtained instant and illegitimate multimillion dollar profits during 1998. Incredibly, Defendants boasted in proxy materials for 1998 that, due to the fact that business was slower than expected in that year, the Compensation Committee had accepted Defendant McGuire’s recommendation that he receive no cash bonus in addition to that year’s \$1.3 million salary. In reality, Defendant McGuire was giving with one hand and stealing with the other—posturing as an accountable CEO while secretly reaping millions of dollars in improper compensation through backdated options at the Corporation’s expense.

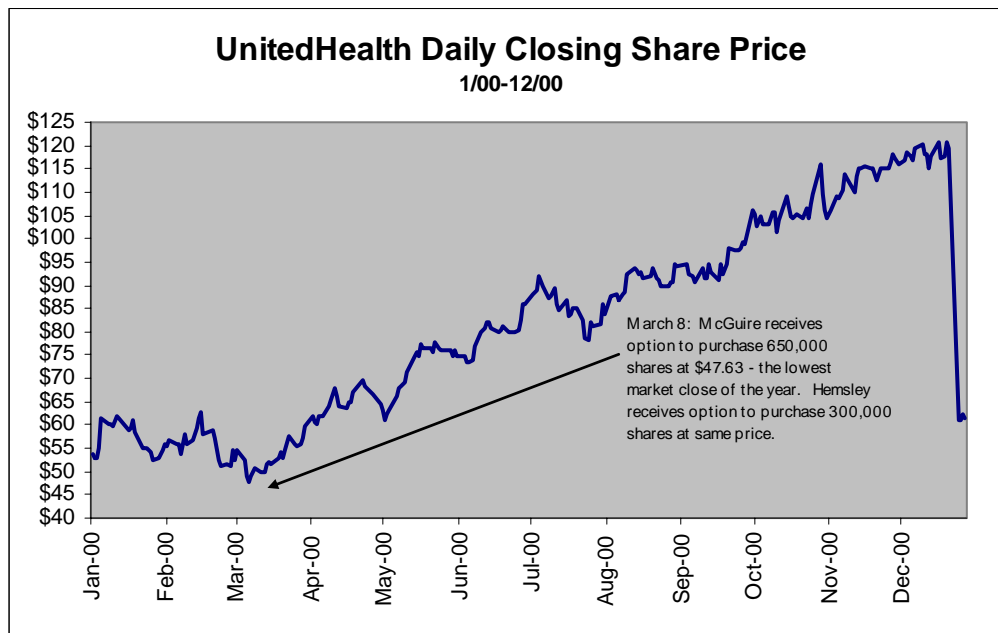
(c) During 1999, the public trading price of UnitedHealth common stock ranged from \$40.13 to \$69.75 per share, with an average closing price of \$54.62. Defendants McGuire and Hemsley each received two stock option grants in 1999. Both received an option grant, purportedly on February 17, 1999, carrying an exercise price of \$46.81. McGuire was granted an option to purchase 250,000 shares and Hemsley to purchase 100,000 shares. The stock closed at \$50.38 only ten days later. Both McGuire and Hemsley also received options, purportedly on October 13, 1999, to purchase 1,825,000 and 910,000 shares, respectively, with an exercise price of \$40.13—the lowest market close for the entire year. A graph demonstrating the timing of these grants is set forth below:



As a result of this backdating, McGuire and Hemsley obtained instant and illegitimate multimillion dollar profits during 1999.

(d) During 2000, the public trading price of UnitedHealth common stock ranged from \$47.63 to \$120.88 per share, with an average closing price of

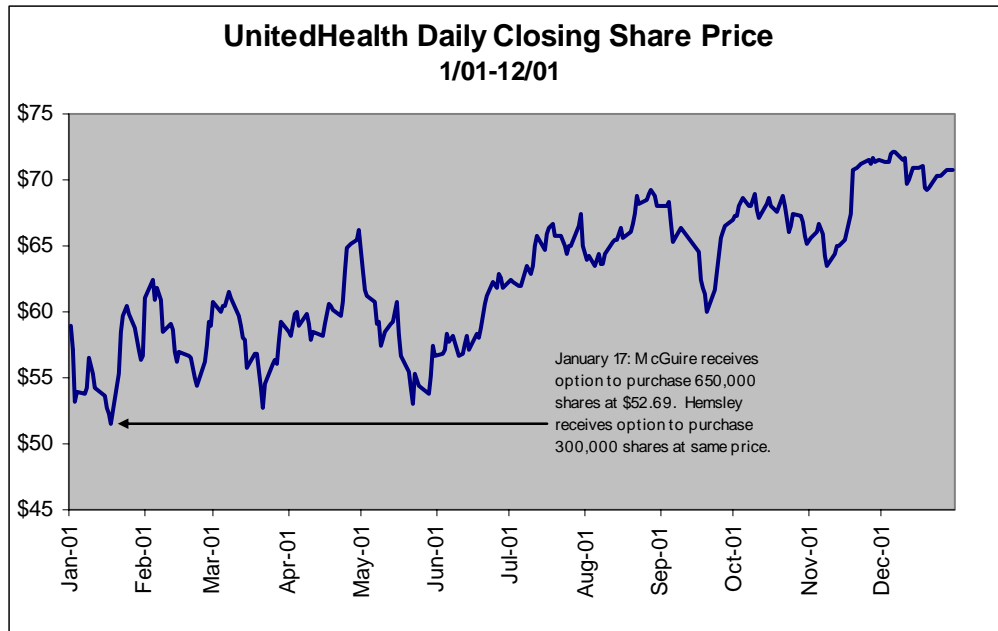
\$81.46. Defendants McGuire and Hemsley each received one stock option grant during 2000. McGuire's 2000 option grant carried the right to purchase 650,000 shares. Hemsley's 2000 option grant carried the right to purchase 300,000 shares. The grants purportedly occurred on March 8, 2000 with an exercise price of \$47.63—the lowest market close for the entire year. A graph demonstrating the timing of these grants is set forth below:



As a result of this backdating, McGuire and Hemsley obtained instant and illegitimate multimillion dollar profits during 2000.

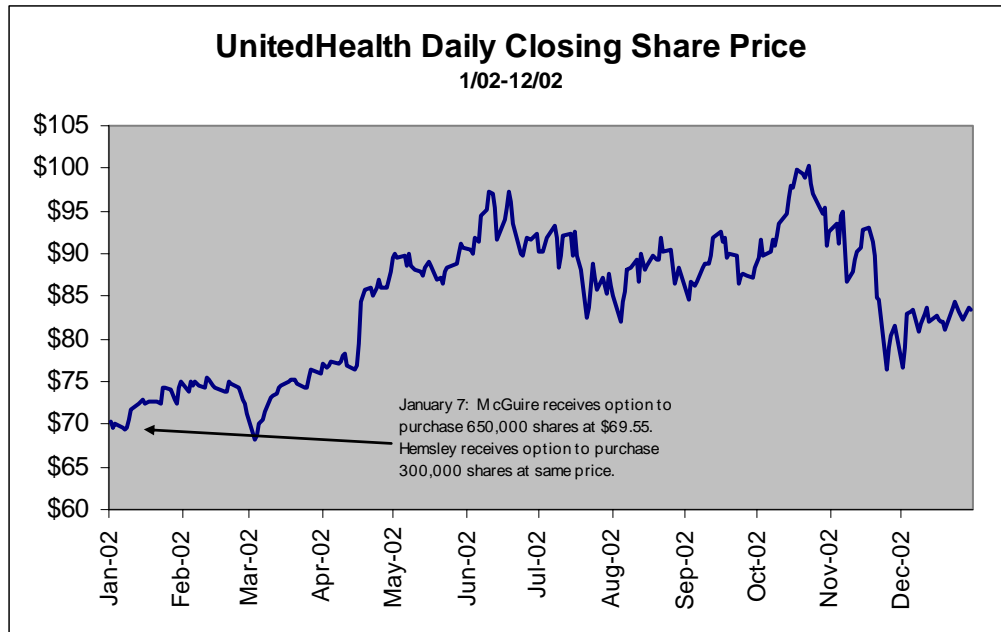
(e) During 2001, the public trading price of UnitedHealth common stock ranged from \$51.56 to \$72.19 per share, with an average closing price of \$62.54. Defendants McGuire and Hemsley each received one stock option grant during 2001. The options gave McGuire the right to purchase 650,000 shares and Hemsley the right to purchase 300,000 shares. The grants purportedly occurred on January 17, 2001 with an exercise price of \$52.69—pennies from the lowest

market close for the entire year. A graph demonstrating the timing of these grants is set forth below:



As a result of this backdating, McGuire and Hemsley obtained instant and illegitimate multimillion dollar profits during 2001.

(f) During 2002, the public trading price of UnitedHealth common stock ranged from \$68.13 to \$100.37 per share, with an average closing price of \$84.62. Defendants McGuire and Hemsley each received one stock option grant during 2002. The options gave McGuire the right to purchase 650,000 shares, and Hemsley the right to purchase 300,000 shares. The grant purportedly occurred on January 7, 2002 with an exercise price of \$69.55—once again, pennies from the lowest market close for the entire year. A graph demonstrating the timing of these grants is set forth below:



As a result of this backdating, McGuire and Hemsley obtained instant and illegitimate multimillion dollar profits during 2002.

43. In all, McGuire and Hemsley personally obtained hundreds of millions of dollars in unjustified and unlawfully obtained compensation as a result of these backdated stock options.

44. The other Officer Defendants also purportedly received grants of stock options on the very same dates as Defendants McGuire and Hemsley. Specifically:

(a) Defendant Lubben purportedly received options on February 6, 1998, October 16, 1998, March 8, 2000, and January 7, 2002 to purchase 23,587, 50,000, 40,000, and 75,000 UnitedHealth shares respectively. These stock options carried the same fraudulent exercise prices as the purported grants to McGuire and/or Hemsley of the same respective dates.

(b) Defendant Wheeler purportedly received options on February 6, 1998, October 16, 1998, October 13, 1999, March 8, 2000, January 17, 2001, and

January 7, 2002 to purchase 20,000, 60,000, 138,760, 60,000, 56,250, and 75,000 UnitedHealth shares respectively. These stock options carried the same fraudulent exercise prices as the purported grants to McGuire and/or Hemsley of the same respective dates.

(c) Defendant Rivet purportedly received options on February 6, 1998, October 16, 1998, October 13, 1999, March 8, 2000, and January 17, 2001 to purchase 51,052, 60,000, 99,812, 40,000, and 75,000 UnitedHealth shares respectively. These stock options carried the same fraudulent exercise prices as the purported grants to McGuire and/or Hemsley of the same respective dates.

(d) Defendant Wills purportedly received options on February 11, 1997 and October 27, 1997 to purchase 90,000 and 100,000 UnitedHealth shares respectively. These stock options carried the same fraudulent exercise prices as the purported grants to McGuire and/or Hemsley of the same respective dates.

(e) Defendant Koppe purportedly received options on February 11, 1997 and February 6, 1998 to purchase 30,000 and 20,000 UnitedHealth shares respectively. These stock options carried the same fraudulent exercise prices as the purported grants to McGuire and/or Hemsley of the same respective dates.

(f) Defendant Carlson purportedly received options on February 11, 1997 and October 27, 1997 to purchase 40,000 and 45,000 UnitedHealth shares respectively. These stock options carried the same fraudulent exercise prices as the purported grants to McGuire and/or Hemsley of the same respective dates.

(g) Defendant Sheehy purportedly received options on January 17, 2001 and January 7, 2002, to purchase 75,000 UnitedHealth shares in both

instances. These stock options carried the same fraudulent exercise prices as the purported grants to McGuire and/or Hemsley of the same respective dates.

45. The Compensation Committee was at all relevant times responsible for administering all executive stock option compensation at UnitedHealth, including the Plan. The Compensation Committee's annual "Report on Executive Compensation" (the "Report") in each year's proxy statement invariably makes clear that "the Committee administers the Company's stock option and stock based incentive plans." The Compensation Committee was also responsible for the entire compensation package during the relevant time period for the senior officers of the Corporation. Each year's Report also contains a specific discussion of the options received during that year by Defendant McGuire, including the dates of grant and exercise prices. Each Report was signed by the members of the Compensation Committee. Accordingly, the members of the Compensation Committee reviewed, approved, and had direct personal knowledge of the stock option grants described above. But for the extreme gross negligence, recklessness, or knowing complicity of the Non-Management Director Defendants, and in particular the members of the Compensation Committee, the backdating of stock option grants to the Officer Defendants could not, and would not, have occurred. Only the abdication of their duties can explain the Directors' year-after-year approval of backdated stock options to executives on the most disadvantageous terms possible for the Corporation.

46. The very terms of Defendant McGuire's employment agreement, dated October 13, 1999, indicate the Non-Management Director Defendants' abdication of their fiduciary responsibilities with respect to stock option compensation of UnitedHealth

executives. That employment agreement provided that McGuire had the unprecedented authority to determine the dates of his own stock option grants by *oral* notification: “The Annual Options shall be granted on such date or dates as Executive requests by oral notification to the Chair of the Compensation and Human Resources Committee.” This stock option compensation program, described as a “thinly disguised attempt to pick the lowest grant price possible” in *The Wall Street Journal*, represents the Non-Management Director Defendants’ abandonment of their fiduciary obligations and is strongly indicative of the rubber-stamping mentality that was necessary for the backdating scheme to succeed. Indeed, the Non-Management Director Defendants must have known of the risk of manipulation created by McGuire’s employment agreements because, in contrast, the Non-Management Director Defendants’ own stock option compensation plan required that their stock options be granted on the same day every year—a method of compensation not susceptible to backdating.

47. The backdating of stock option grants and the issuance of these options in the amounts awarded to the Officer Defendants caused, and continues to cause, substantial harm to the Corporation. Backdating stock option grants represents a direct and continuing waste of valuable corporate assets. UnitedHealth is the counterparty to the options contracts with its executives, and the proceeds obtained, and yet to be obtained, by these executives through exercising their backdated stock options are therefore siphoned, on a dollar for dollar basis, directly from UnitedHealth. In effect, the backdated grants gave the Officer Defendants an option to purchase UnitedHealth shares directly from the Corporation at an unfair and improperly low price, with the Corporation making up the difference. The sums involved are enormous: as of December 31, 2005,

the unrealized gains on Defendant McGuire's unexercised stock options alone were worth in excess of \$1.6 billion.

48. The practice of backdating stock options also substantially harmed, and continues to harm, UnitedHealth by virtue of the fact that the practice is unlawful, deceitful, and caused the Corporation to misreport its financial data. Under the relevant accounting rules, options priced below the stock's fair market value upon award are considered compensation and must, therefore, be treated by the Corporation as an expense directly impacting earnings. Upon information and belief, UnitedHealth did not properly expense this compensation to the Officer Defendants even though the backdated stock options at issue in this action were priced below the fair market value of the Corporation's stock at the date of grant and issuance.

49. As a result, the Corporation announced in its Form 10-Q, filed on May 11, 2006 with the SEC, that it would most likely need to restate its previously reported financials for fiscal years 2003 through 2005 by as much as \$286 million. The Form 10-Q also disclosed that UnitedHealth "has identified a significant deficiency in its internal controls relating to stock option plan administration and accounting for and disclosure of stock option grants." UnitedHealth also disclosed that it is the subject of an ongoing SEC investigation into options backdating, and the Corporation must now expend valuable resources contending with that and possibly other investigations, all made necessary by the manipulation of the timing of options grants to gratuitously enrich UnitedHealth executives. As a further consequence of the backdating scheme, UnitedHealth has been named as a defendant in two securities fraud class actions related to the same misrepresentations as the SEC investigation. On May 17, 2006, UnitedHealth announced

that it had also received a subpoena from the United States Attorney for the Southern District of New York requesting documents from 1999 to the present relating to the granting of stock options. Revelation of the backdating scandal has also inflicted substantial harm to the Corporation's reputation and reduced its market capitalization by roughly \$14.4 billion—a decline of approximately 20%.

50. Further, the option backdating likely caused UnitedHealth to violate the Internal Revenue Code. As the Corporation explained in its May 11, 2006 Form 10-Q, compensation from exercised stock options issued under the backdating scheme that was previously deducted, was in fact, “nondeductible under Section 162(m) of the Internal Revenue Code.” Accordingly, the Corporation disclosed in its May 11, 2006 Form 10-Q that it, “may be required to pay additional taxes and interest associated with deductions it previously took for compensation associated with such exercised stock options.” On May 17, 2006, UnitedHealth announced that it had received a request from the Internal Revenue Service for documents from 2003 to the present relating to stock options and other compensation for the executive officers named in UnitedHealth's annual proxy statements.

51. Backdating stock options also severely undermines the already grossly excessive incentives that purportedly justified the use of stock options to compensate UnitedHealth's management. Stock option compensation is intended to encourage management to maximize the return to shareholders by aligning the interests of management with those of shareholders. In contrast, by permitting the Officer Defendants to receive stock option grants backdated to correspond to low points in the stock price, the Non-Management Director Defendants created an absurd incentive for

management to engineer dips and volatile swings in the stock price. Further, the size and terms of the grants were so excessive that they incentivized management to retire rather than work.

52. Issuing backdated stock options is unlawful, *ultra vires* and outside the scope of legitimate and permissible business conduct. The practice is inherently manipulative and involves a substantial likelihood that business records were intentionally falsified. Issuing backdated stock options is, therefore, not a form of business conduct and is not protected by the business judgment rule.

DERIVATIVE ACTION ALLEGATIONS

53. Plaintiffs bring this action derivatively on behalf and for the benefit of UnitedHealth to redress injuries suffered, and yet to be suffered, by the Corporation as a direct and proximate result of the breaches of fiduciary duty and other legal violations alleged herein. UnitedHealth is named as a nominal defendant solely in a derivative capacity.

54. Plaintiffs are public pension funds and institutional shareholders of UnitedHealth common stock that will adequately and fairly represent the interests of the Corporation and its shareholders in this litigation.

55. Plaintiffs presently own UnitedHealth common shares. Plaintiffs collectively owned common shares of UnitedHealth at the time of the injurious acts complained of herein and continuously at all other relevant times. Plaintiffs intend to retain shares in UnitedHealth through the duration of the litigation.

56. The wrongful acts complained of herein subject, and will persist in subjecting, the Corporation to continuing harm because the adverse consequences of the

injurious actions are still in effect.

57. The wrongful actions complained of herein were fraudulently concealed from UnitedHealth shareholders.

58. This is not a collusive action to confer jurisdiction on a court of the United States.

DEMAND EXCUSED ALLEGATIONS

59. Plaintiffs have made no demand on the UnitedHealth Board of Directors to institute an action in connection with the wrongs alleged herein. Such demand would be futile and useless and is excused.

60. The wrongful acts complained of herein were self dealing, outside the scope of the Board of Directors' authority, and served no legitimate business purpose. Such acts were not, nor could they have been, the product of a valid or good faith exercise of business judgment. Such acts were, moreover, unlawful and incapable of ratification. Accordingly, the actions complained of herein are not protected by the business judgment rule, and the related requirement of pre-suit demand on the Board of Directors is therefore inapplicable and excused.

61. The wrongful acts complained of herein were, furthermore, approved by and/or performed for the benefit of an overwhelming majority of the Board of Directors as it is presently constituted. As members of the Board of Directors during the period of backdating, every single current Non-Management Director Defendant but one approved backdated stock options. Moreover, fully ten of the current Board of Directors' twelve members either personally benefited from backdated stock options, or were members of the Compensation Committee that was directly responsible for authorizing the backdated

grants or the Audit Committee that was directly responsible for approving the Corporation's false financial statements. Specifically:

(a) Defendant McGuire personally received backdated stock option grants every year between at least 1997 and 2002. The present value of Defendant McGuire's unexercised stock options is roughly \$1.6 billion. Defendant McGuire personally obtained hundreds of millions of dollars in unlawful compensation by means of backdated stock options. Defendant McGuire was a member of the Board of Directors throughout this period and is presently the Chairman of the Board of Directors. During the relevant period, Defendant McGuire also received tens of millions of dollars in salary, bonuses, and other forms of compensation.

(b) Defendant Hemsley personally received backdated stock option grants every year but one during the relevant period. Defendant Hemsley obtained tens of millions of dollars in unlawful compensation by means of backdated stock options. Defendant Hemsley is presently a member of the Board of Directors.

(c) Non-Management Director Defendants Kean, Spears, Mundinger, Ballard, and Ryan were members of the Board throughout the relevant period. Each of these defendants also served on the Compensation Committee during this period. The Compensation Committee was directly responsible for administering the Corporation's stock option compensation for executives, and its members therefore approved, ratified, and were otherwise responsible for backdated stock option grants. Defendants Kean, Spears, Mundinger, Ballard, and Ryan are

presently Board members of the Corporation.

(d) Non-Management Director Defendants Ballard, Johnson, Leatherdale, Ryan and Wilensky were members of the Board throughout the relevant period. Each of these defendants also served on the Audit Committee during the relevant period. The Audit Committee was directly responsible for approving the Corporation's false financial statements. Defendants Ballard, Johnson, Leatherdale and Ryan are presently Board members of the Corporation.

62. Accordingly, a majority of the members of the Board of Directors as presently composed were either directly responsible for administering the unlawfully backdated options grants challenged in this litigation, or directly and personally benefited from the backdated grants. There is substantial reason to doubt that the current members of the Board of Directors can and/or will pursue litigation to remedy harms resulting from their own performance of, and/or acquiescence in, unlawful acts with no ascertainable connection to the exercise of business judgment.

63. There is also substantial reason to doubt that the current members of the Board of Directors are sufficiently independent to prosecute this action. The members of the Board of Directors have themselves each individually gained tremendous wealth through their own receipt and exercise of UnitedHealth stock options since at least the outset of this time period. In fact, the current members of the Board of Directors other than McGuire and Hemsley have collectively profited in excess of \$100 million through exercising UnitedHealth stock options they each received for their service on the Board since 1997. As a result of this enormous compensation, much of which was bestowed upon them by Defendant McGuire, these directors lack any independence. Specifically:

(a) Upon information and belief, Defendant Ballard obtained in excess of \$7.9 million through the exercise of stock options since 1997.

(b) Upon information and belief, Defendant Burke obtained in excess of \$24.3 million through the exercise of stock options since 1997.

(c) Upon information and belief, Defendant Johnson obtained in excess of \$9.0 million through the exercise of stock options since 1997.

(d) Upon information and belief, Defendant Kean obtained in excess of \$15.1 million through the exercise of stock options since 1997.

(e) Upon information and belief, Defendant Leatherdale obtained in excess of \$26.7 million through the exercise of stock options since 1997.

(f) Upon information and belief, Defendant Munding obtained in excess of \$1.6 million through the exercise of stock options since 1997.

(g) Upon information and belief, Defendant Ryan obtained in excess of \$2.1 million through the exercise of stock options since 1997.

(h) Upon information and belief, Defendant Spears obtained in excess of \$21.1 million through the exercise of stock options since 1997.

(i) Upon information and belief, Defendant Wilensky obtained in excess of \$4.8 million through the exercise of stock options since 1997.

CAUSES OF ACTION

COUNT I

AGAINST THE INDIVIDUAL DEFENDANTS FOR VIOLATION OF SECTION 10(b) OF THE SECURITIES EXCHANGE ACT AND RULE 10B-5 PROMULGATED THEREUNDER

64. Plaintiffs incorporate by reference and reallege each and every allegation contained above as though fully set forth herein.

65. This Count is brought pursuant to Section 10(b) of the Exchange Act and Rule 10b-5(a), (b), and (c) against all Individual Defendants on behalf of UnitedHealth.

66. During the relevant period, the Individual Defendants, individually and in concert, directly and indirectly, by use of the means or instrumentalities of interstate commerce, the mails, and or the facilities of a national securities exchange:

(a) Employed devices, schemes, and/or artifices involving the issuance of fraudulently priced options to defraud UnitedHealth;

(b) Made untrue statements of material fact and/or omitted to state material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading, in order to defraud UnitedHealth; and/or

(c) Engaged in acts, practices, and a course of conduct that operated as a fraud or deceit upon UnitedHealth causing the issuance of fraudulently priced options contracts.

67. The Individual Defendants made material misrepresentations concerning the validity of and the true grant dates for the stock option contracts at issue in this action knowingly and/or in reckless disregard for the truth, with the purpose and effect of misleading and defrauding UnitedHealth concerning fraudulently priced options contracts.

68. The Individual Defendants used or engaged in devices, schemes, artifices, practices and/or courses of conduct knowingly and/or in reckless disregard of the truth, with the purpose and effect of misleading and defrauding UnitedHealth.

69. By virtue of the foregoing, the Individual Defendants have violated

Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

70. As detailed herein, UnitedHealth suffered significant damages as a direct result of its issuance of fraudulently priced stock options, which options were issued as a direct and proximate result of Defendants' misconduct alleged herein.

COUNT II

AGAINST THE INDIVIDUAL DEFENDANTS FOR BREACH OF FIDUCIARY DUTY

71. Plaintiffs incorporate by reference and reallege each and every allegation contained above as though fully set forth herein.

72. The Individual Defendants, by reason of their positions as fiduciaries of the Corporation, owed duties of due care, undivided loyalty, good faith, and truthful disclosure. The Individual Defendants violated and breached these duties. Each of the Officer Defendants were recipients of backdated options bearing fraudulent prices. Each of the Non-Management Director defendants approved, ratified or were otherwise responsible for administering and/or permitting the backdated options to be granted to the Officer Defendants.

73. The Directors, including the Officer Defendants, the Non-Management Directors and, particularly those directors who were members of the Compensation Committee during the period that the backdated option were granted, each abandoned and abdicated their fiduciary responsibilities to the Corporation. Their conduct could not have been an exercise of good faith business judgment. Further, those directors who were members of the Audit Committee breached their fiduciary duties to the Corporation by allowing the filing and dissemination of false and inaccurate financial statements not prepared in accordance with GAAP.

74. As a direct and proximate result of the Individual Defendants' breach of fiduciary duty and waste of corporate assets, the Corporation has sustained, and will continue to sustain, substantial harm.

75. The Individual Defendants are liable to the Corporation as a result of the acts alleged herein.

COUNT III

AGAINST THE NON-MANAGEMENT DIRECTOR DEFENDANTS FOR AIDING AND ABETTING A BREACH OF FIDUCIARY DUTY

76. Plaintiffs incorporate by reference and reallege each and every allegation contained above as though fully set forth herein.

77. By reason of their positions as fiduciaries of the Corporation, the Officer Defendants owed duties of due care, undivided loyalty, good faith, and truthful disclosure. The Officer Defendants violated and breached these duties.

78. By virtue of their role in creating and administering the Corporation's stock option plan, and their approval and authorization of the stock options that were backdated as alleged herein, the Non-Management Director Defendants were able to, and in fact did, render aid and assistance to the Officer Defendants in their breach of fiduciary duty. The Non-Management Director Defendants did so knowing, or but for their gross negligence would have known, of the Officer Defendants' fiduciary breach.

79. As a direct and proximate result of the Non-Management Director Defendants' aiding and abetting the Officer Defendants' breach of fiduciary duty, the Corporation has sustained, and will continue to sustain, substantial harm.

80. The Non-Management Director Defendants are liable to the Corporation as a result of the acts alleged herein.

COUNT IV

AGAINST THE OFFICER DEFENDANTS FOR UNJUST ENRICHMENT

81. Plaintiffs incorporate by reference and reallege each and every allegation contained above as though fully set forth herein.

82. As a direct and proximate result of the acts alleged herein, the Officer Defendants wrongfully deprived the Corporation of substantial wealth and were unjustly enriched thereby.

83. The Officer Defendants are liable to the Corporation as a result and should be required to disgorge their unjust gains and return them to the Corporation.

COUNT V

AGAINST THE OFFICER DEFENDANTS FOR RESCISSION

84. Plaintiffs incorporate by reference and reallege each and every allegation contained above as though fully set forth herein.

85. As a result of the acts alleged herein, all stock option contracts between the Officer Defendants and UnitedHealth entered into during the relevant period were obtained through the Officer Defendants' fraud, deceit, and abuse of control. Further, the backdated stock options and the shares underlying these options were not duly authorized by the Board, as was legally required, because they were not authorized in accordance with the terms of the publicly filed contracts—including the Plan and the Officer Defendants' employment agreements—approved by UnitedHealth shareholders and filed with the SEC.

86. All stock option contracts between the Officer Defendants and UnitedHealth entered into during the relevant period should, therefore, be rescinded, with

all sums paid under such contracts returned to the Corporation, and all such executory contracts cancelled and declared void.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment as follows:

- A. Awarding to the Corporation money damages against all Individual Defendants, jointly and severally, for all losses and damages suffered as a result of the acts and transactions complained of herein;
- B. Awarding to the Corporation restitution from each of the Officer Defendants and ordering disgorgement of all profits, benefits, and/or other compensation obtained by the Officer Defendants as a result of the acts and transactions complained of herein;
- C. Rescission of all option contracts granted to the Officer Defendants as a result of the acts and transactions complained of herein and the cancellation, nullification, and declaration as void of any and all current or future obligations of the Corporation under all executory contracts obtained by the Officer Defendants as a result of the acts and transactions complained of herein;
- D. Formation of a constructive trust to hold all executory options contracts issued to the Officer Defendants;
- E. Awarding punitive damages against the Officer 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 relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all claims so triable.

Dated: May 18, 2006

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