

COMMONWEALTH OF KENTUCKY  
JEFFERSON CIRCUIT COURT  
DIVISION 12

Case No. 08-CI-003527 (Consolidated with No. 08-CI-004236)

In Re HUMANA INC. ) Judge: Susan Schultz Gibson  
DERIVATIVE LITIGATION )  
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 )  
\_\_\_\_\_)  
 )  
This Document Relates To: )  
ALL ACTIONS )  
\_\_\_\_\_)

**STIPULATION OF SETTLEMENT**

This Stipulation of Settlement (the "Stipulation"), dated June 25, 2010, is entered into, by and through their respective undersigned counsel, among and between: (i) Settling Plaintiff<sup>1</sup> Christine Del Gaizo and Paul Regiec;<sup>2</sup> (ii) Humana Inc.; and (iii) Individual Defendants Michael B. McCallister, Arthur P. Hipwell, James E. Murray, James H. Bloem, David A. Jones, Jr., W. Ann Reynolds, Kurt J. Hilzinger, Frank A. D'Amelio, W. Roy Dunbar, James J. O'Brien, and William J. McDonald. The Stipulation is intended by the Parties to fully, finally, and forever compromise, resolve, discharge, and settle the Released Claims, Defendants' Released Claims, and the Derivative Action in accordance with the terms and conditions set forth below, subject to the approval of the Jefferson Circuit Court for the Commonwealth of Kentucky (the "Court").

## **I. PLAINTIFF'S CLAIMS AND THE BENEFITS OF SETTLEMENT**

Settling Plaintiff believes the claims asserted in the Derivative Action have merit. Nonetheless, Settling Plaintiff and Settling Plaintiff's Counsel recognize and acknowledge the expense and length of time that would be required to prosecute the Derivative Action through trial and appeal. Settling Plaintiff and Settling Plaintiff's Counsel have also taken into account the uncertain outcome and the risks of litigating the Derivative Action, as well as the difficulties and delays inherent in such litigation. Settling Plaintiff's Counsel are mindful of the inherent problems of proof and possible defenses to the claims asserted in such actions. Based on their review and analysis of the relevant facts, allegations, defenses, and controlling legal principles, Settling Plaintiff's Counsel believe the settlement set forth herein confers substantial benefits upon, and is in the best interests of, Humana and its shareholders. The settlement provides for additional management oversight and review of the Company's policies and processes related to its prescription drug program, including actuarial analysis, pricing models, and enrollment forecasts. The settlement also expands the Company's insider trading controls to include

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<sup>1</sup> All capitalized terms are defined in Section III.1 herein, unless otherwise stated.

<sup>2</sup> Plaintiff Regiec no longer owns shares of Humana stock. He is a party to the settlement for the purposes of dismissing his individual lawsuit.

prohibitions on trading in derivatives of Humana's stock by its employees. Accordingly, Settling Plaintiff has agreed to settle the Derivative Action pursuant to the terms and provisions of the Stipulation after considering, *inter alia*, the substantial benefits that Humana will receive when weighed against the risks, expense, and duration of continued litigation.

## **II. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

The Individual Defendants have denied the allegations in the Derivative Action and continue to deny they have committed, threatened, or attempted to commit, any violations of law, or breached any duty owed to Settling Plaintiff, Humana, or its shareholders. Without admitting the validity or merit of any allegations made in the Derivative Action, or any liability with respect thereto, the Individual Defendants and Humana are entering into this settlement because it will eliminate the uncertainty, distraction, disruption, burden, and expense of further litigation. Further, the Individual Defendants and Humana acknowledge that the settlement is fair, reasonable, adequate, and in the best interests of Humana and its shareholders.

Neither the Stipulation, nor any of its terms or provisions, nor entry of the Judgment (defined in Section III.1 herein), nor any document or exhibit referred to herein or attached hereto, nor any action taken to carry out the Stipulation, is, may be construed as, or may be used as evidence of the validity of any of the Released Claims or an admission by or against the Individual Defendants of any fault, wrongdoing, or concession of liability whatsoever.

## **III. THE SETTLEMENT TERMS**

NOW, THEREFORE, without any admission or concession on the part of Settling Plaintiff of any lack of merit of the Derivative Action whatsoever, and without any admission or concession on the part of the Individual Defendants and Humana as to the merits of the Derivative Action or as to any liability or wrongdoing whatsoever, IT IS HEREBY STIPULATED AND AGREED, by and among the Parties, through their respective counsel, that, subject to the approval of the Court, in consideration of the mutual agreements set forth herein, the Released Claims and Defendants' Released Claims shall be finally and fully compromised, settled, and released, and the Derivative Action shall be dismissed with prejudice.

## 1. Definitions

As used in the Stipulation, the following terms have the meanings specified below:

1.1. "Bankruptcy Proceedings" means any proceedings by or on behalf of Humana, whether voluntary or involuntary, initiated under any chapter of the United States Bankruptcy Code, including any act of receivership, asset seizure, or similar federal or state law action.

1.2. "Current Humana Shareholders" means any Persons who owned Humana common stock as of the date of the execution of the Stipulation and who continue to hold their Humana common stock as of the date of the final settlement approval hearing, excluding the Individual Defendants, the officers and directors of Humana, members of their immediate families, and their legal representatives, heirs, successors, or assigns, and any entity in which Individual Defendants have or had a controlling interest.

1.3. "Defendants' Counsel" means collectively Greenebaum Doll & McDonald PLLC, 3500 National City Tower, 101 S. Fifth Street, Louisville, KY 40202, and Fried, Frank, Harris, Shriver & Jacobson LLP, One New York Plaza, New York, NY 10004.

1.4. "Defendants' Released Claims" means any and all claims, rights, or causes of action, liabilities, injunctive relief, or any other legal or equitable remedies, whether based on federal, state, local statutory or common law, or any other law, rule, or regulation (whether foreign or domestic) by Humana, or derivatively on behalf of Humana, that are alleged in the Derivative Action or that arise out of, in connection with, or relate to any of the acts, matters, allegations, or transactions referred to in the Derivative Action, including, without limitation Unknown Claims (as defined in Section III.1, ¶1.19) against the Plaintiffs, Settling Plaintiff's Counsel, or Humana (except for any claims to enforce the settlement).

1.5. "Derivative Action" means the consolidated shareholder derivative action pending in the Jefferson Circuit Court for the Commonwealth of Kentucky captioned *In re Humana Inc. Derivative Litigation*, Consolidated Case No. 08-CI-003527.

1.6. "Fee and Expense Award" means the agreed-upon attorneys' fees and reimbursement of expenses that will be paid to Settling Plaintiff's Counsel, subject to Court

approval, in recognition of the substantial benefits conferred on Humana by the implementation of the corporate governance reforms, attached hereto as Exhibit A (the "Corporate Governance Reforms"), in connection with the Derivative Action.

1.7. "Final" means the expiration of all times to seek appeal or other review of the Judgment, or if any appeal or other review of such Judgment is filed and not dismissed, after such Judgment is upheld on appeal in all material respects and is no longer subject to appeal, reargument, or review by writ of certiorari or otherwise.

1.8. "Humana" or the "Company" means nominal defendant Humana Inc.

1.9. "Individual Defendants" means collectively, Michael B. McCallister, Arthur P. Hipwell, James E. Murray, James H. Bloem, David A. Jones, Jr., W. Ann Reynolds, Kurt J. Hilzinger, Frank A. D'Amelio, W. Roy Dunbar, James J. O'Brien, and William J. McDonald.

1.10. "Judgment" means the [Proposed] Final Judgment and Order of Dismissal with Prejudice to be rendered by the Court, substantially in the form of Exhibit D attached hereto.

1.11. "Parties" means collectively, Settling Plaintiff, the Individual Defendants, and Humana.

1.12. "Person" means an individual, corporation, limited liability corporation, professional corporation, partnership, limited partnership, limited liability partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

1.13. "Related Persons" means each of the Individual Defendants' past or present subsidiaries, parents, successors and predecessors, insurers, officers, directors, agents, employees, attorneys, advisors, investment advisors, auditors, accountants, and any firm, trust, corporation, officer, director, or other individual or entity in which any Individual Defendant or Humana has a controlling interest, and the legal representatives, heirs, successors in interest, or assigns of any Individual Defendant.

1.14. "Released Claims" means any and all claims, rights or causes of action, liabilities, injunctive relief, or any other legal or equitable remedies, whether based on federal, state, local statutory or common law or any other law, rule, or regulation (whether foreign or domestic) by Humana, or derivatively on behalf of Humana, that are alleged in the Derivative Action or that arise out of, in connection with, or relate to any of the acts, matters, allegations, or transactions referred to in the Derivative Action, including, without limitation, Unknown Claims (as defined in Section III.1, ¶1.19) against the Individual Defendants and their related Released Parties (except for any claims to enforce the Settlement).

1.15. "Released Parties" means collectively each of the Individual Defendants and each of their Related Persons.

1.16. "Settlement Hearing" means the hearing on final approval of the proposed settlement contemplated by the Stipulation, made upon noticed motion of the Parties, at which time the Parties will seek entry of the Judgment.

1.17. "Settling Plaintiff" means Christine Del Gaizo, individually and derivatively on behalf of Humana.

1.18. "Settling Plaintiff's Counsel" means collectively Robbins Umeda LLP, 600 B Street, Suite 1900, San Diego, CA 92101, Parry Deering Futscher & Sparks, PSC, 411 Garrard Street, PO Box 2618, Covington, KY 41012, and the Law Offices of Alfred G. Yates, Jr. 429 Forbes Avenue, Pittsburgh, PA 15219.

1.19. "Unknown Claims" means any claim that any Party does not know or suspect exists in his, her, or its favor at the time of the settlement including, without limitation, those claims which, if known, might have affected the decision to enter into, or not object to, this settlement. The Parties expressly waive, relinquish, and release any and all provisions, rights, and benefits conferred by or under California Civil Code Section 1542 ("§1542") or any other law of the United States or any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to §1542, which provides:

***A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.***

The Parties acknowledge that they may discover facts in addition to or different from those now known or believed to be true by them, with respect to the Released Claims and Defendants' Released Claims in the settlement, as the case may be, but it is the intention of the Parties to completely, fully, finally, and forever compromise, settle, release, discharge, and extinguish any and all Released Claims and Defendants' Released Claims known or unknown, suspected or unsuspected, contingent or absolute, accrued or unaccrued, apparent or unapparent, whether or not concealed or hidden, which do not exist, or heretofore existed, or may hereafter exist, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such additional or different facts. The Parties shall be deemed by operation of the Judgment to have acknowledged that the foregoing waivers were separately bargained for and are key elements of the settlement.

## **2. Settlement of the Derivative Action**

2.1 The Parties have conducted arm's-length negotiations over an extended period of time and have reached an agreement in good faith to settle the Derivative Action. As consideration for the settlement, Humana has agreed to implement the Corporate Governance Reforms. The Corporate Governance Reforms, including the designation of the Bid Development and Medicare Plan Benefit Manager at Humana and the implementation of insider trading controls, are designed to prevent a recurrence of the issue that gave rise to the Derivative Action. Humana acknowledges that the prosecution of the Derivative Action was a material factor in the implementation of the Corporate Governance Reforms, which provide a substantial benefit to Humana and its shareholders.

2.2 Within 45 days after the Judgment shall have become Final, Humana shall implement the Corporate Governance Reforms. The Corporate Governance Reforms shall

remain in effect for a period of four (4) years or for so long as Humana offers prescription drug programs, whichever period is shorter.

### **3. Preliminary Approval and Notice**

3.1 Promptly after execution of the Stipulation, Settling Plaintiff shall submit the Stipulation together with its exhibits to the Court and shall apply for entry of an order (the "Notice Order"), substantially in the form of Exhibit B attached hereto, requesting: (i) preliminary approval of the settlement set forth in the Stipulation; (ii) approval of the form and content of the Summary Notice of Pendency and Proposed Settlement of Shareholder Derivative Action ("Summary Notice") and the Notice of Pendency and Proposed Settlement of Shareholder Derivative Action ("Notice"); and (iii) a date for the Settlement Hearing.

3.2 Settling Plaintiff will move the Court to approve the form and content of notice of the settlement to Current Humana Shareholders. Specifically, Settling Plaintiff will seek approval of the Summary Notice, substantially in the form attached hereto as Exhibit C-1, and the Notice, substantially in the form attached hereto as Exhibit C-2. Humana shall publish the Summary Notice once in the *Investor's Business Daily*. The Summary Notice shall refer shareholders to the websites of Humana and Robbins Umeda LLP to view the detailed Notice and Stipulation. Humana shall be responsible for all costs associated with publishing the Summary Notice. In addition, Humana shall, at its sole discretion, publish the Notice in a company-issued press release or cause a copy of the Notice to be filed with the U.S. Securities and Exchange Commission ("SEC") via a Form 8-K. The Parties believe the content and manner of the notices requested constitute adequate and reasonable notice to Humana shareholders pursuant to applicable law.

### **4. Fee and Expense Award**

4.1 In recognition of the substantial benefits conferred upon Humana through the implementation of the Corporate Governance Reforms, and subject to Court approval, Humana shall pay Settling Plaintiff's Counsel \$325,000 for their attorneys' fees and reimbursement of expenses (the "Fee and Expense Award"). Settling Plaintiff and Settling Plaintiff's Counsel

agree that they will not request that the Court approve payment of attorneys' fees and expenses, or reimbursement or compensation for any other costs or expenses, in excess of \$325,000, as provided for in this paragraph, both in the Court and on any appeal. The Fee and Expense Award shall be paid within five (5) business days after the Judgment shall have become Final. If all of the conditions set forth in Section III.6 below are not met, or the Stipulation is otherwise terminated for any reason, Settling Plaintiff's Counsel and their law firms (or their successors) shall refund the Fee and Expense Award, if paid, to Humana within ten (10) business days. The Parties negotiated the provisions herein related to the Fee and Expense Award after they agreed to the Corporate Governance Reforms.

4.2 The Fee and Expense Award shall constitute the final and complete payment for Settling Plaintiff's Counsel's attorneys' fees and reimbursement of expenses that have been incurred or will be incurred in connection with the Derivative Action and the resolution of the claims asserted in the Derivative Action. If Humana fails to pay or direct its insurer to pay Settling Plaintiff's Counsel the Fee and Expense Award, or if the insurer fails to make such payment, Settling Plaintiff shall have the right to withdraw from the settlement. In such event, the Stipulation shall be void in its entirety, and the status quo ante shall be restored.

## **5. Releases**

5.1 Upon the entry of the Judgment, Settling Plaintiff, Humana, and its shareholders, on behalf of themselves and each of their heirs, executors, administrators, insurers, predecessors, successors, parents, subsidiaries, affiliates, custodians, agents, representatives, estates, trusts, trustees, trust beneficiaries, spouses, marital communities, immediate family members, and assigns, shall be deemed to have—and by operation of a Final Judgment in the Derivative Action shall have—fully, finally, and forever released, waived, relinquished, discharged, and dismissed any and all Released Claims against any Released Parties, and shall forever be barred and enjoined from instituting, commencing, or prosecuting any and all Released Claims against any Released Parties.

5.2 Upon entry of the Judgment, the Individual Defendants, on behalf of themselves and each of their heirs, executors, administrators, insurers, predecessors, successors, parents, subsidiaries, affiliates, custodians, agents, representatives, estates, trusts, trustees, trust beneficiaries, spouses, marital communities, immediate family members, and assigns, shall be deemed to have—and by operation of a Final Judgment in the Derivative Action shall have—fully, finally, and forever released, waived, relinquished, discharged, and dismissed any and all Defendants' Released Claims against Settling Plaintiff, Settling Plaintiff's Counsel, and Humana, and shall forever be barred and enjoined from instituting, commencing, or prosecuting any and all of Defendants' Released Claims, against Settling Plaintiff, Settling Plaintiff's Counsel, and Humana.

5.3 The Parties will seek entry of the Judgment by the Court, dismissing the Derivative Action with prejudice and barring any claims that have been brought in any court or forum by Humana, or any Humana shareholder on Humana's behalf, relating to or arising out of allegations in the complaints filed in this Derivative Action.

**6. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination**

6.1 The settlement shall be conditioned on the occurrence of all of the following events:

- (a) entry of the Notice Order;
- (b) final approval of the settlement, following notice to Current Humana Shareholders and the Settlement Hearing, pursuant to KRS §271B.7-400;
- (c) entry of the Judgment dismissing the Derivative Action with prejudice;
- (d) payment to Settling Plaintiff's Counsel of the Fee and Expense Award in accordance with ¶¶4.1 - 4.2, above; and
- (e) the Judgment has become Final, as defined in ¶1.7 above.

6.2 If any of the conditions listed in ¶6.1 are not met, the Stipulation and any settlement documentation shall be null and void and of no force and effect, unless Settling

Plaintiff's Counsel and Defendants' Counsel mutually agree in writing to proceed with the Stipulation. In the event that any of the conditions listed in ¶6.1 are not met, the Parties shall be restored to their positions on the date immediately prior to the execution date of the Stipulation, and the Stipulation shall not be deemed to constitute an admission of fact by any Party, and neither the existence of the Stipulation nor its contents, shall be admissible in evidence or be referred to for any purposes in the Derivative Action or in any litigation or judicial proceeding. However, no order of the Court or modification or reversal on appeal of any order of the Court concerning the amount of any attorneys' fees, costs, and expenses awarded by the Court to Settling Plaintiff's Counsel shall constitute grounds for cancellation or termination of the Stipulation.

## **7. Bankruptcy**

7.1 In the event of Bankruptcy Proceedings, the Parties agree to use their reasonable best efforts to obtain all necessary orders, consents, releases, and approvals for effectuation of the Stipulation in a timely and expeditious manner. By way of example only, the Parties agree to cooperate in making applications and motions to the bankruptcy court for relief from any stay, approval of the settlement, authority to release funds, authority for Humana's insurer to disburse insurance proceeds consistent with the Stipulation, authority to release claims and indemnify officers and directors, and authority for the Court to enter all necessary orders and judgments, and any other actions reasonably necessary to effectuate the terms of the Stipulation.

7.2 If any Bankruptcy Proceedings on behalf of Humana are initiated prior to the payment of the Fee and Expense Award, the Settling Parties agree to seek an order from the Bankruptcy Court presiding over such Bankruptcy Proceedings: (i) either lifting the automatic stay for limited purposes of authorizing such payment, or finding that the payment of the Fee and Expense Award on behalf of the Individual Defendants by their insurer or insurers under their respective policies or related compromise of coverage and the releases provided pursuant to the Stipulation does not violate the automatic stay; and (ii) finding that the payment of the Fee and Expense Award on behalf of the Individual Defendants by their insurer or insurers under their

respective policies does not constitute a preference, voidable transfer, fraudulent transfer, or similar transaction. In addition, in the event of any Bankruptcy Proceedings by or on behalf of Humana, the Parties agree that all dates and deadlines set forth herein will be extended for such periods of time as are necessary to obtain necessary orders, consents, releases, and approvals from the Bankruptcy Court to carry out the terms and conditions of the Stipulation.

## **8. Miscellaneous Provisions**

8.1 The Parties: (i) acknowledge that it is their intent to consummate the Stipulation; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of the Stipulation.

8.2 In the event that any part of the settlement is found to be unlawful, unconscionable, or against public policy by a court of competent jurisdiction, any Party shall have the option to withdraw from the settlement.

8.3 The Parties agree that terms of the settlement were negotiated in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel. In addition, the Parties agree that, during the course of the Derivative Action, the Parties and their respective counsel at all times acted professionally and in compliance with Rule 11 of the Kentucky Rules of Civil Procedure ("Civil Rule 11") and any other court rule or statute with respect to any claims or defenses in the Derivative Action. Accordingly, the Judgment in the Derivative Action will contain a finding that during the course of the litigation, the Parties and their respective counsel at all times complied with the requirements of Civil Rule 11 and any other court rule or statute with respect to any claims or defenses in the Derivative Action. The Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Derivative Action was brought or defended in bad faith or without a reasonable basis.

8.4 The existence of or the provisions contained in the Stipulation shall not be deemed to prejudice in any way the respective positions of the Parties with respect to the

Derivative Action, shall not be deemed a presumption, a concession, or admission by any of the Parties of any fault, liability, or wrongdoing as to any facts, claims, or defenses that have been or might have been alleged or asserted in the Derivative Action or with respect to any of the claims settled in this Derivative Action, or any other action or proceeding, and shall not be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any person in the Derivative Action, or in any other action or proceeding, except for any litigation or judicial proceeding arising out of or relating to the Stipulation or the settlement whether civil, criminal, or administrative, for any purpose other than as provided expressly herein. In addition, Humana, any Individual Defendant, or Related Person may file the Stipulation and/or the Judgment in related litigation as evidence of the settlement, or in any action that has been or may be brought against him, her, or it in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

8.5 The exhibits to the Stipulation are material and integral parts hereof and are fully incorporated herein by this reference. The Stipulation and the exhibits attached hereto represent the complete and final resolution of all disputes between the Parties with respect to the Derivative Action, constitute the entire agreement among the Parties, and supersede any and all prior negotiations, discussions, agreements, or undertakings, whether oral or written, with respect to such matters.

8.6 The Stipulation may be modified or amended only by a writing signed by the signatories hereto.

8.7 The Stipulation shall be deemed drafted equally by all Parties hereto.

8.8 The Stipulation and the settlement contemplated by it shall be governed by, and construed in accordance with, the laws of the State of Delaware, where Humana is incorporated, without regard to Delaware's conflict of law rules.

8.9 No representations, warranties, or inducements have been made to any of the Parties concerning the Stipulation or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents.

8.10 Except as otherwise provided herein, each of the Parties shall bear his, her, or its own fees and costs.

8.11 Each counsel or other Person executing the Stipulation or its exhibits on behalf of any of the Parties hereby warrants that such Person has the full authority to do so.

8.12 The Stipulation shall be binding upon and inure to the benefit of the Parties and their respective agents, executors, heirs, successors, and assigns.

8.13 The Stipulation may be executed in counterparts by the signatories hereto, including by facsimile, and as so executed shall constitute one agreement.

8.14 All proceedings in the Derivative Action shall be stayed, except as provided in the Stipulation. Other than seeking approval of the settlement or as permitted herein or as may be expressly required by the Court, Settling Plaintiff and Settling Plaintiff's Counsel agree that Settling Plaintiff will not take any action, take any discovery, or make any filings in the Derivative Action, other than those contemplated by the Stipulation.

8.15 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Stipulation, and the Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Stipulation.

8.16 The waiver by any party of any breach of the Stipulation by any other party shall not be deemed a waiver for any other prior or subsequent breach of the Stipulation.

8.17 All notices, requests, claims, demands, and other communications under the Stipulation shall be in writing, and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by registered or certified mail (postage prepaid, return receipt requested), by facsimile, or by Federal Express or similar overnight courier to the respective Parties at the following addresses (or at such address for a party as shall be specified in a notice given in accordance with this paragraph):

**If to Settling Plaintiff's Counsel:**

ROBBINS UMEDA LLP  
BRIAN J. ROBBINS  
GEORGE C. AGUILAR  
ASHLEY R. PALMER  
600 B Street, Suite 1900  
San Diego, CA 92101

Facsimile: (619) 525-3991

**If to Defendants' Counsel:**

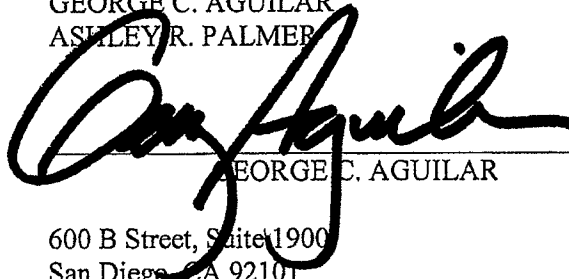
FRIED, FRANK, HARRIS, SHRIVER  
& JACOBSON LLP  
WILLIAM G. MCGUINNESS  
DAVID B. HENNES  
One New York Plaza  
New York, NY 10004  
Facsimile: (212) 859-4000

IN WITNESS WHEREOF, the Parties hereto have caused the Stipulation to be executed, by their duly authorized attorneys, dated as of June 25, 2010.

DATED: June 25, 2010

Respectfully submitted,

ROBBINS UMEDA LLP  
BRIAN J. ROBBINS  
GEORGE C. AGUILAR  
ASHLEY R. PALMER



GEORGE C. AGUILAR

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Lead Counsel for Plaintiff

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Liaison Counsel for Plaintiff

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Telephone: (412) 391-5164  
Facsimile: (412) 471-1033

Additional Counsel for Plaintiff

FRIED, FRANK, HARRIS, SHRIVER  
& JACOBSON LLP  
WILLIAM G. MCGUINNESS  
DAVID B. HENNES  
JENNIFER K. KIM

DATED: June 25 2010



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GREENEBAUM DOLL & MCDONALD PLLC  
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Facsimile: (502) 540-2203

Counsel for Individual Defendants and Nominal  
Defendant Humana

# EXHIBIT A

## **EXHIBIT A**

### **I. CORPORATE GOVERNANCE REFORMS**

Within 45 days following the issuance of an order approving the settlement of this action, the Company shall implement the following practices and amend such policies as necessary to incorporate the following practices. These practices shall remain in effect for a minimum period of four (4) years or for so long as the Company offers prescription drug programs ("PDPs"), whichever period is shorter.

#### **A. Designate a Bid Development and Medicare Plan Benefit Manager**

1. Humana shall designate an individual to be the Bid Development and Medicare Plan Benefit Manager ("BPM"). The Company may designate as the BPM an existing employee of the Company, who may retain his or her existing duties in addition to serving as the BPM. The Company shall ensure that the BPM is well qualified and credentialed to carry out the responsibilities of the position. The BPM shall be responsible for at least the following:

(a) Ensuring that the Company continues to conduct its business in adherence with all applicable laws and regulations concerning the Company's bids for its proposed PDPs that the Company submits to the Centers for Medicare and Medicaid Services ("CMS");

(b) Ensuring that the Company's applicable policies, procedures, and methods of determining actuarial analyses, pricing models, tier utilization, and enrollment forecasting that formulate the Company's expected average cost for the Medicare-covered benefits for each PDP continue to be reviewed for effectiveness and efficiency, at least annually, by a qualified team of internal actuaries and by such external consultants as the Company may determine are needed; and

(c) Ensuring that the Company continue those policies, standards, and controls that assure that its policies, procedures, and methods of determining enrollment forecasting, membership management and retention, co-payment pricing and government plan pricing for each PDP are designed and used in a manner so as to be integrated with the Company's system of internal controls.

2. The BPM shall also:

(a) Ensure that the Company continues its process of certifying to CMS on an annual basis the soundness of the actuarial valuation of any PDP bid;

(b) Present the estimates that are utilized in the Company's actuarial analyses, pricing models, and tier utilization and enrollment forecasting to the Company's Chief Financial Officer ("CFO") on a timely basis for review as to process; and

(c) Ensure that the relevant actuaries and finance controllers meet on a regular basis to review and analyze PDP claims data and financial results for the purpose of providing particularized trend and benefit-use analysis and other relevant bid-determinant data.

3. The BPM will provide updates and reports concerning his or her duties as needed, but will provide updates and reports on all topics identified in Section A.1, at least annually, to the Company's Chief Operating Officer and CFO.

**B. Insider Trading Controls**

1. The Company will expand its current prohibition on trading in derivatives of Humana stock to include all employees of the Company, rather than only officers.

# EXHIBIT B

COMMONWEALTH OF KENTUCKY  
JEFFERSON CIRCUIT COURT  
DIVISION 12

Case No. 08-CI-003527 (Consolidated with No. 08-CI-004236)

In Re HUMANA INC. ) Judge: Susan Schultz Gibson  
DERIVATIVE LITIGATION )  
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\_\_\_\_\_) )  
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This Document Relates To: )  
ALL ACTIONS )  
\_\_\_\_\_) )

**[PROPOSED] ORDER PRELIMINARILY APPROVING DERIVATIVE SETTLEMENT  
AND PROVIDING FOR NOTICE**

WHEREAS, the parties to the above-captioned derivative action (the "Derivative Action") have made application for an order: (i) preliminarily approving the settlement of the Derivative Action ("Settlement"), in accordance with a Stipulation of Settlement dated June 25, 2010, (the "Stipulation"), which, together with the exhibits annexed thereto, sets forth the terms and conditions for the proposed Settlement and dismissal of the Derivative Action with prejudice, upon the terms and conditions set forth therein; (ii) approving the form and content of the Summary Notice of Pendency and Proposed Settlement of Shareholder Derivative Action ("Summary Notice") for publication and the Notice of Pendency and Proposed Settlement of Shareholder Derivative Action ("Notice") for posting on the websites of Humana Inc. ("Humana") and Robbins Umeda LLP; and (iii) setting a hearing for final approval of the Settlement ("Settlement Hearing");

WHEREAS, all terms contained herein shall have the same meanings as set forth in the Stipulation (in addition to those terms defined herein); and

WHEREAS, the Court, having considered the Stipulation and the exhibits annexed thereto, IT IS HEREBY ORDERED, this \_\_\_ day of \_\_\_\_\_, 2010, as follows:

1. The Court does hereby preliminarily approve, subject to further consideration at the Settlement Hearing described below, the Stipulation and Settlement set forth therein, including the terms and conditions for Settlement and dismissal with prejudice of the Derivative Action.

2. The Settlement Hearing shall be held before this Court on \_\_\_\_\_, 2010 at \_\_\_\_\_ .m. to determine: (i) whether the Settlement of the Derivative Action on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to Humana and Current Humana Shareholders, and should be finally approved by the Court; (ii) whether the Judgment as provided in Section III, ¶1.10 of the Stipulation and attached as Exhibit D thereto should be entered herein; and (iii) whether the agreed-to Fee and Expense Award (as defined in the Stipulation, Section III, ¶4.1) should be awarded to Plaintiff's Counsel.

3. The Court approves, as to form and content, the Notice and Summary Notice attached as exhibits to the Stipulation and, for convenience, annexed hereto as Exhibits 1 and 2,

respectively, and finds that the posting and publishing of such notices, respectively, substantially in the manner and form set forth in this Order, meets the requirements of KRS 271B.7-400 and due process and is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all Persons thereto.

4. Not later than fifteen (15) calendar days following the entry of this Order, Humana shall cause the Summary Notice to be published once in the *Investor's Business Daily*. Exhibit 2.

5. Not later than fifteen (15) calendar days following entry of this Order, Humana and Robbins Umeda LLP shall cause the Notice and the Stipulation to be posted on each of their respective websites referenced above. Exhibit 1.

6. At least ten (10) calendar days prior to the Settlement Hearing, Humana shall serve on counsel in the Derivative Action and file with the Court proof, by affidavit or declaration, of: (a) the publication of the Summary Notice in the *Investor's Business Daily*; and (b) the posting of the Notice and Stipulation on its website.

7. At least ten (10) calendar days prior to the Settlement Hearing, Plaintiff's Counsel shall file with the Court proof, by affidavit or declaration, of the posting of the Notice and Stipulation on its website.

8. All Current Humana Shareholders shall be bound by all orders, determinations, and judgments in the Derivative Action concerning the Settlement, whether favorable or unfavorable to the Current Humana Shareholders.

9. Pending final determination of whether the Settlement should be approved, no Current Humana Shareholder, either directly, representatively, or in any other capacity, shall commence or prosecute against any of the Individual Defendants or Humana, or derivatively on behalf of Humana, any action or proceeding in any court or tribunal asserting any of the Released Claims, as defined in the Stipulation, Section III., ¶1.14.

10. All papers in support of the Settlement and the Parties' responses to objections, if any, by Current Humana Shareholders shall be filed with the Court and served at least five (5) calendar days prior to the Settlement Hearing.

11. Any Current Humana Shareholder may object or appear and show cause, if he, she, or it has any concern, why the Settlement of the Derivative Action should not be approved as fair, reasonable, and adequate, or why the Judgment should not be entered thereon, or why the Fee and Expense Award should not be awarded to Plaintiff's Counsel provided, however, unless otherwise ordered by the Court, no Current Humana Shareholder shall be heard or entitled to contest the approval of the terms and conditions of the Settlement, or, if approved, the Judgment to be entered thereon approving the same, or the Fee and Expense Award to Plaintiff's Counsel unless that shareholder has, at least fourteen (14) calendar days prior to the Settlement Hearing: (1) filed with the Clerk of the Court a written objection to the Settlement setting forth: (a) the nature of the objection; (b) proof of ownership of Humana common stock through the date of the Settlement Hearing, including the number of shares of Humana common stock and the date of purchase; and (c) any documentation in support of such objection; and (2) if a Current Humana Shareholder intends to appear and requests to be heard at the Settlement Hearing, such shareholder must have, in addition to the requirements of (1) above, filed with the Clerk of the Court: (a) a written notice of such shareholder's intention to appear; (b) a statement that indicates the basis for such appearance; and (c) the identities of any witnesses the shareholder intends to call at the Settlement Hearing and the subjects of their testimony. If a Current Humana Shareholder files a written objection and/or written notice of intent to appear, such shareholder must also simultaneously serve copies of such notice, proof, statement, and documentation, together with copies of any other papers or briefs such shareholder files with the Court (either by hand delivery or by first class mail) upon each of the following thereof:

ROBBINS UMEDA LLP  
BRIAN J. ROBBINS  
GEORGE C. AGUILAR  
ASHLEY R. PALMER  
600 B Street, Suite 1900  
San Diego, CA 92101

*Plaintiff's Counsel*

FRIED, FRANK, HARRIS, SHRIVER  
& JACOBSON LLP  
WILLIAM G. MCGUINNESS  
DAVID B. HENNES  
One New York Plaza  
New York, NY 10004

*Defendants' Counsel*

The written objections and copies of any papers and briefs in support thereof to be filed in Court shall be delivered by hand or sent by first class mail to:

Clerk of the Court  
Jefferson Circuit Court, Commonwealth of Kentucky  
700 W. Jefferson St.  
Louisville, KY 40202

Any Current Humana Shareholder who does not make his, her, or its objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the Settlement as incorporated in the Stipulation, or to the Fee and Expense Award to Plaintiff's Counsel, unless otherwise ordered by the Court, but shall otherwise be bound by the Judgment to be entered and the releases to be given.

12. Neither the Stipulation nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Individual Defendants or the Related Persons; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Individual Defendants, or the Related Persons in any proceeding of any nature. Humana, any Individual Defendant, or Related Person may file the Stipulation and/or the Judgment in any action that has been or may be brought against him, her, or it in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

13. The Court reserves the right to adjourn the date of the Settlement Hearing or modify any other dates set forth herein without further notice to Current Humana Shareholders, and retains jurisdiction to consider all further applications arising out of or connected with the Settlement.

14. The Court may approve the Settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to Current Humana Shareholders.

IT IS SO ORDERED:

DATED: \_\_\_\_\_

\_\_\_\_\_  
HONORABLE SUSAN SCHULTZ GIBSON  
CIRCUIT COURT JUDGE

# EXHIBIT C-1

COMMONWEALTH OF KENTUCKY  
JEFFERSON CIRCUIT COURT  
DIVISION 12

Case No. 08-CI-003527 (Consolidated with No. 08-CI-004236)

In Re HUMANA INC. ) Judge: Susan Schultz Gibson  
DERIVATIVE LITIGATION )  
 )  
 )  
\_\_\_\_\_)  
 )  
This Document Relates To: )  
ALL ACTIONS )  
\_\_\_\_\_)

**SUMMARY NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF  
SHAREHOLDER DERIVATIVE ACTION**

**TO: ALL HOLDERS OF HUMANA INC. ("HUMANA" OR THE "COMPANY") COMMON STOCK AS OF JUNE 25, 2010 ("CURRENT HUMANA SHAREHOLDERS"). PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. IT MAY AFFECT YOUR RIGHTS.**

**YOU ARE HEREBY NOTIFIED**, pursuant to KRS 271B.7-400 and the Order Preliminarily Approving Derivative Settlement and Providing for Notice (the "Preliminary Order") of the Jefferson Circuit Court for the Commonwealth of Kentucky, Division 12 (the "Court"), that a proposed settlement agreement (the "Settlement") has been reached among and between Plaintiff<sup>1</sup>, derivatively on behalf of Humana, the Individual Defendants, and Humana in connection with the above-captioned shareholder derivative action, *In re Humana Inc. Derivative Litigation*, Case No. 08-CI-003527 (the "Derivative Action"). The proposed Settlement, if approved by the Court, would fully, finally, and forever resolve the issues raised in the Derivative Action.

A hearing (the "Settlement Hearing") shall be held before this Court on \_\_\_\_\_, 2010 at \_\_:\_\_ .m. or as soon thereafter as counsel may be heard in the courtroom of the Honorable Susan Schultz Gibson, Circuit Judge, located in the Jefferson County Judicial Center, 700 W. Jefferson St., Louisville, Kentucky 40202, to determine: (i) whether the proposed Settlement of the Derivative Action, upon the terms set forth in the Stipulation, should be finally approved in all respects as fair, reasonable, and adequate to Humana and Current Humana Shareholders; (ii) whether the Final Judgment and Order of Dismissal with Prejudice approving the Settlement should be entered; and (iii) whether the agreed to Fee and Expense Award to Plaintiff's Counsel should be finally approved.

If you are a Current Humana Shareholder, your rights to pursue certain derivative claims on behalf of Humana may be affected by the Settlement.

A detailed Notice of Pendency and Proposed Settlement of Derivative Action ("Notice") describing in greater detail the Derivative Action, the proposed Settlement, and the rights of

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<sup>1</sup> All terms contained herein shall have the same meanings as set forth in the Stipulation of Settlement (the "Stipulation"), in addition to those terms defined herein.

Current Humana Shareholders with regard to the Settlement are available on the websites [www.humana.com](http://www.humana.com) and [www.robbinsumeda.com](http://www.robbinsumeda.com). If you wish to receive a copy of the detailed Notice, you may obtain a copy by referring to either of these websites. You may also find additional information concerning the Settlement, including a copy of the Stipulation, on these websites.

A Current Humana Shareholder wishing to assert an objection to the Settlement should, no later than \_\_\_\_\_, 2010:

1. file with the Clerk of the Court a written objection to the Settlement setting forth: (a) the nature of the objection; (b) proof of ownership of Humana capital stock through the date of the Settlement Hearing, including the number of shares of Humana capital stock and the date of purchase; and (c) any documentation in support of such objection;

2. if a Current Humana Shareholder intends to appear and requests to be heard at the Settlement Hearing, such shareholder must have, in addition to the requirements of (1) above, filed with the Clerk of the Court: (a) a written notice of such shareholder's intention to appear; (b) a statement that indicates the basis for such appearance; and (c) the identities of any witnesses the shareholder intends to call at the Settlement Hearing and the subjects of their testimony; and

3. if a Current Humana Shareholder files a written objection and/or written notice of intent to appear, such shareholder must also simultaneously serve copies of such notice, proof, statement, and documentation, together with copies of any other papers or briefs such shareholder files with the Court (either by hand delivery or by first class mail) upon each of the following:

ROBBINS UMEDA LLP  
BRIAN J. ROBBINS  
GEORGE C. AGUILAR  
ASHLEY R. PALMER  
600 B Street, Suite 1900  
San Diego, CA 92101

*Plaintiff's Counsel*

FRIED, FRANK, HARRIS, SHRIVER  
& JACOBSON LLP  
WILLIAM G. MCGUINNESS

DAVID B. HENNES  
One New York Plaza  
New York, NY 10004

*Defendants' Counsel*

Unless otherwise ordered by the Court, any Current Humana Shareholder who does not make his, her, or its objection or opposition in the manner provided shall be deemed to have waived any and all objections and opposition, and shall be forever foreclosed from making any objection to the fairness, reasonableness, and adequacy of the proposed Settlement, and shall otherwise be bound by the Judgment to be entered and the releases to be given.

**PLEASE DO NOT CALL OR WRITE THE COURT REGARDING THIS NOTICE**

Dated: \_\_\_\_\_, 2010

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BY ORDER OF THE COURT  
JEFFERSON CIRCUIT COURT  
COMMONWEALTH OF KENTUCKY

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# EXHIBIT C-2

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COMMONWEALTH OF KENTUCKY  
JEFFERSON CIRCUIT COURT  
DIVISION 12

Case No. 08-CI-003527 (Consolidated with No. 08-CI-004236)

In Re HUMANA INC. ) Judge: Susan Schultz Gibson  
DERIVATIVE LITIGATION )  
 )  
 )  
\_\_\_\_\_) )  
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This Document Relates To: )  
ALL ACTIONS )  
\_\_\_\_\_) )

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF  
SHAREHOLDER DERIVATIVE ACTION**

**TO: ALL HOLDERS OF HUMANA INC. COMMON STOCK AS OF JUNE 25, 2010 ("CURRENT HUMANA SHAREHOLDERS"). PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. IT MAY AFFECT YOUR RIGHTS.**

**YOU ARE HEREBY NOTIFIED**, pursuant to KRS 271B.7-400 and the Order Preliminarily Approving Derivative Settlement and Providing for Notice (the "Preliminary Order") of the Jefferson Circuit Court for the Commonwealth of Kentucky, Division 12 (the "Court"), that a proposed settlement agreement (the "Settlement") has been reached among and between Settling Plaintiff, derivatively on behalf of Humana, the Individual Defendants, and Humana in connection with the above captioned shareholder derivative action, *In re Humana Inc. Derivative Litigation*, Case No. 08-CI-003527.

This Derivative Action has been brought derivatively on behalf of Humana and alleges breaches of fiduciary duties, waste of corporate assets, and unjust enrichment by the Individual Defendants. The proposed Settlement, if approved by the Court, would fully, finally, and forever resolve the litigation upon the terms and subject to the conditions set forth in the Stipulation of Settlement (the "Stipulation") and summarized in this Notice.

A Settlement Hearing shall be held before this Court on \_\_\_\_\_, 2010 at \_\_\_:\_\_\_ .m. or as soon thereafter as counsel may be heard in the courtroom of the Honorable Susan Schultz Gibson, Circuit Judge, located in the Jefferson County Judicial Center, 700 W. Jefferson St., Louisville, Kentucky 40202 to determine: (i) whether the proposed Settlement of the Derivative Action, upon the terms set forth in the Stipulation, should be finally approved in all respects as fair, reasonable, and adequate to Humana and Current Humana Shareholders; (ii) whether the Final Judgment approving the Settlement should be entered; and (iii) whether the agreed to Fee and Expense Award to Settling Plaintiff's Counsel should be finally approved.

This Notice is not intended to be and should not be construed as an expression of any opinion by the Court with respect to the truth of the allegations asserted in the Derivative Action or the merits of the claims or defenses asserted in the Derivative Action. This Notice is merely to inform you of the pendency and proposed Settlement and of your rights as a Current Humana Shareholder.

## **I. DEFINITIONS USED IN THIS NOTICE**

1. "Current Humana Shareholders" means any Persons who owned Humana common stock as of the date of the execution of the Stipulation and who continue to hold their Humana common stock as of the date of the final settlement approval hearing, excluding the Individual Defendants, the officers and directors of Humana, members of their immediate families, and their legal representatives, heirs, successors, or assigns, and any entity in which Individual Defendants have or had a controlling interest.

2. "Defendants' Counsel" means collectively Greenebaum Doll & McDonald PLLC, 3500 National City Tower, 101 S. Fifth Street, Louisville, KY 40202, and Fried, Frank, Harris, Shriver & Jacobson LLP, One New York Plaza, New York, NY 10004.

3. "Defendants' Released Claims" means any and all claims, rights, or causes of action, liabilities, injunctive relief, or any other legal or equitable remedies, whether based on federal, state, local statutory or common law, or any other law, rule, or regulation (whether foreign or domestic) by Humana, or derivatively on behalf of Humana, that are alleged in the Derivative Action or that arise out of, in connection with, or relate to any of the acts, matters allegations or transactions referred to in the Derivative Action, including, without limitation Unknown Claims (as defined in Section I, ¶18) against the Settling Plaintiff, Settling Plaintiff's Counsel, or Humana (except for any claims to enforce the Settlement).

4. "Derivative Action" means the shareholder derivative action pending in the Jefferson Circuit Court for the Commonwealth of Kentucky captioned *In re Humana Inc. Derivative Litigation*, Consolidated Case No. 08-CI-003527.

5. "Fee and Expense Award" means the agreed upon attorneys' fees and reimbursement of expenses that will be paid to Settling Plaintiff's Counsel, subject to Court approval, in recognition of the substantial benefits conferred on Humana by the implementation of the corporate governance reforms, described below (the "Corporate Governance Reforms"), in connection with the Derivative Action.

6. "Final" means the expiration of all times to seek appeal or other review of the Judgment, or if any appeal or other review of such Judgment is filed and not dismissed, after

such Judgment is upheld on appeal in all material respects and is no longer subject to appeal, reargument, or review by writ of certiorari or otherwise.

7. "Humana" or the "Company" means nominal defendant Humana Inc.

8. "Individual Defendants" means collectively, Michael B. McCallister, Arthur P. Hipwell, James E. Murray, James H. Bloem, David A. Jones, Jr., W. Ann Reynolds, Kurt J. Hilzinger, Frank A. D'Amelio, W. Roy Dunbar, James J. O'Brien, and William J. McDonald.

9. "Judgment" means the Proposed Final Judgment and Order of Dismissal With Prejudice to be rendered by the Court, substantially in the form of Exhibit D attached to the Stipulation.

10. "Parties" means collectively, Settling Plaintiff, the Individual Defendants, and Humana.

11. "Person" means an individual, corporation, limited liability corporation, professional corporation, partnership, limited partnership, limited liability partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

12. "Related Persons" means each of the Individual Defendants' past or present subsidiaries, parents, successors and predecessors, insurers, officers, directors, agents, employees, attorneys, advisors, investment advisors, auditors, accountants, and any firm, trust, corporation, officer, director, or other individual or entity in which any Individual Defendant or Humana has a controlling interest, and the legal representatives, heirs, successors in interest, or assigns of any Individual Defendant.

13. "Released Claims" means any and all claims, rights or causes of action, liabilities, injunctive relief, or any other legal or equitable remedies, whether based on federal, state, local statutory or common law or any other law, rule or regulation (whether foreign or domestic) by Humana, or derivatively on behalf of Humana, that are alleged in the Derivative Action or that arise out of, in connection with, or relate to any of the acts, matters allegations or transactions referred to in the Derivative Action, including, without limitation Unknown Claims

(as defined in Section I, ¶18) against the Individual Defendants and their related Released Parties (except for any claims to enforce the Settlement).

14. "Released Parties" means collectively each of the Individual Defendants and each of their Related Persons.

15. "Settlement Hearing" means the hearing on final approval of the proposed settlement contemplated by the Stipulation, made upon noticed motion of the Parties, at which time the Parties will seek entry of the Judgment.

16. "Settling Plaintiff" means Christine Del Gaizo, individually and derivatively on behalf of Humana.

17. "Settling Plaintiff's Counsel" means collectively Parry Deering Futscher & Sparks, PSC, 411 Garrard Street, PO Box 2618, Covington, KY 41012, Robbins Umeda LLP, 600 B Street, Suite 1900, San Diego, CA 92101, and the Law Offices of Alfred G. Yates, Jr. 429 Forbes Avenue, Pittsburgh, PA 15219.

18. "Unknown Claims" means any claim that any Party does not know or suspect exists in his, her, or its favor at the time of the Settlement including, without limitation, those claims which, if known, might have affected the decision to enter into, or not object to, this Settlement. The Parties expressly waive, relinquish, and release any and all provisions, rights, and benefits conferred by or under California Civil Code Section 1542 ("§1542") or any other law of the United States or any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to §1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

## **II. PLAINTIFF'S CLAIMS AND THE BENEFITS OF SETTLEMENT**

Settling Plaintiff believes the claims asserted in the Derivative Action have merit. Nonetheless, Settling Plaintiff and Settling Plaintiff's Counsel recognize and acknowledge the expense and length of time that would be required to prosecute the Derivative Action through trial and appeal. Settling Plaintiff and Settling Plaintiff's Counsel have also taken into account

the uncertain outcome and the risks of litigating the Derivative Action, as well as the difficulties and delays inherent in such litigation. Settling Plaintiff's Counsel are mindful of the inherent problems of proof and possible defenses to the claims asserted in such actions. Based on their review and analysis of the relevant facts, allegations, defenses, and controlling legal principles, Settling Plaintiff's Counsel believe the Settlement set forth herein confers substantial benefits upon, and is in the best interests of, Humana and its shareholders. The Settlement provides for additional management oversight and review of the Company's policies and processes related to its prescription drug program, including actuarial analysis, pricing models, and enrollment forecasts. The Settlement also expands the Company's insider trading controls to include prohibitions on trading in derivatives of Humana's stock by its employees. Accordingly, Settling Plaintiff has agreed to settle the Derivative Action pursuant to the terms and provisions of the Stipulation after considering, *inter alia*, the substantial benefits that Humana will receive when weighed against the risks, expense, and duration of continued litigation.

### **III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

The Individual Defendants have denied the allegations in the Derivative Action and continue to deny they have committed, threatened, or attempted to commit, any violations of law, or breached any duty owed to Settling Plaintiff, Humana, or its shareholders. Without admitting the validity or merit of any allegations made in the Derivative Action, or any liability with respect thereto, the Individual Defendants and Humana are entering into this Settlement because it will eliminate the uncertainty, distraction, disruption, burden, and expense of further litigation. Further, the Individual Defendants and Humana acknowledge that the settlement is fair, reasonable, adequate, and in the best interests of Humana and its shareholders.

Neither the Stipulation, nor any of its terms or provisions, nor entry of the Judgment, nor any document or exhibit referred or attached to the Stipulation, nor any action taken to carry out the Stipulation is, may be construed as, or may be used as evidence of the validity of any of the Released Claims or an admission by or against the Individual Defendants of any fault, wrongdoing, or concession of liability whatsoever.

#### **IV. THE PROPOSED SETTLEMENT**

From February 2010 through May 2010, counsel for the Parties engaged in substantial negotiations and discussions regarding a possible settlement of the action. On March 23, 2010, after engaging in multiple arm's-length good-faith settlement discussions, the Settling Parties reached an agreement in principle to settle the Derivative Action. After further negotiations, the Parties executed the Stipulation. The terms and conditions of the Settlement are fully set forth in the Stipulation. The Stipulation has been filed with the Court and is also available for viewing on the websites of Humana ([www.humana.com](http://www.humana.com)) and Robbins Umeda LLP ([www.robbinsumeda.com](http://www.robbinsumeda.com)). The following are the Corporate Governance Reforms agreed to by the Parties.

##### **A. Corporate Governance Reforms**

1. Humana shall designate an individual to be the Bid Development and Medicare Plan Benefit Manager ("BPM"). The Company may designate as the BPM an existing employee of the Company, who may retain his or her existing duties, in addition to serving as the BPM. The Company shall ensure that the BPM is well qualified and credentialed to carry out the responsibilities of the position. The BPM shall be responsible for at least the following:

(a) Ensuring that the Company continues to conduct its business in adherence with all applicable laws and regulations concerning the Company's bids for its proposed Prescription Drug Plans ("PDPs") that the Company submits to the Centers for Medicare and Medicaid Services ("CMS");

(b) Ensuring that the Company's applicable policies, procedures, and methods of determining actuarial analyses, pricing models, tier utilization, and enrollment forecasting that formulate the Company's expected average cost for the Medicare covered benefits for each PDP continue to be reviewed for effectiveness and efficiency at least annually by a qualified team of internal actuaries and by such external consultants as the Company may determine are needed; and

(c) Ensuring that the Company continue those policies, standards, and controls that assure that its policies, procedures, and methods of determining enrollment

forecasting, membership management and retention, co-payment pricing, and government plan pricing for each PDP are designed and used in a manner so as to be integrated with the Company's system of internal controls.

2. The BPM shall also:

(a) Ensure that the Company continues its process of certifying to CMS on an annual basis the soundness of the actuarial valuation of any PDP bid;

(b) Present the estimates that are utilized in the Company's actuarial analyses, pricing models, and tier utilization and enrollment forecasting to the Company's Chief Financial Officer ("CFO") on a timely basis for review as to process; and

(c) Ensure that the relevant actuaries and finance controllers meet on a regular basis to review and analyze PDP claims data and financial results for the purpose of providing particularized trend and benefit-use analysis and other relevant bid-determinant data.

3. The BPM will provide updates and reports concerning his or her duties as needed, but will provide updates and reports on all topics identified in Section A.1 at least annually to the Company's Chief Operating Officer and CFO.

4. The Company will expand its current prohibition on trading in derivatives of Humana stock to include all employees of the Company, rather than only officers.

## **B. Acknowledgments**

Humana acknowledges that the prosecution of the Derivative Action was a material factor in the implementation of the Corporate Governance Reforms, which provide a substantial benefit to Humana and its shareholders.

## **C. Sunset Provision**

Humana agrees to keep the Corporate Governance Reforms in effect for a period of four (4) years or for so long as the Company offers PDPs, whichever period is shorter.

## **V. DISMISSAL AND RELEASES**

The full terms of the dismissal and release of claims are set forth in the Stipulation. The following is only a summary.

Upon the entry of the Judgment, Settling Plaintiff, Humana, and its shareholders, on behalf of themselves and each of their heirs, executors, administrators, insurers, predecessors, successors, parents, subsidiaries, affiliates, custodians, agents, representatives, estates, trusts, trustees, trust beneficiaries, spouses, marital communities, immediate family members and assigns, shall be deemed to have—and by operation of a final judgment in the Derivative Action shall have—fully, finally, and forever released, waived, relinquished, discharged, and dismissed any and all Released Claims against any Released Parties, and shall forever be barred and enjoined from instituting, commencing, or prosecuting any and all Released Claims against any Released Parties.

Upon entry of the Judgment, the Individual Defendants, on behalf of themselves and each of their heirs, executors, administrators, insurers, predecessors, successors, parents, subsidiaries, affiliates, custodians, agents, representatives, estates, trusts, trustees, trust beneficiaries, spouses, marital communities, immediate family members and assigns, shall be deemed to have—and by operation of a final judgment in the Derivative Action shall have—fully, finally, and forever released, waived, relinquished, discharged, and dismissed any and all Defendants' Released Claims against Settling Plaintiff, Settling Plaintiff's Counsel, and Humana, and shall forever be barred and enjoined from instituting, commencing, or prosecuting any and all of Defendants' Released Claims, against Settling Plaintiff, Settling Plaintiff's Counsel, and Humana.

The Parties will seek entry of the Judgment by the Court, dismissing the Derivative Action with prejudice and barring any claims that have been brought in any court or forum by Humana, or any Humana shareholder on Humana's behalf, relating to or arising out of allegations in the complaints filed in this Derivative Action.

## **VI. THE FEE AND EXPENSE AWARD**

In recognition of the substantial benefits conferred upon Humana through the implementation of the Corporate Governance Reforms, and subject to Court approval, Humana shall pay Settling Plaintiff's Counsel \$325,000 for their attorneys' fees and reimbursement of expenses. The Fee and Expense Award shall be paid within five (5) business days after the Judgment on final approval shall have become Final.

The Fee and Expense Award shall constitute the final and complete payment for Settling Plaintiff's Counsel's attorneys' fees and reimbursement of expenses that have been incurred or will be incurred in connection with the Derivative Action and the resolution of the claims asserted in the Derivative Action. If Humana fails to pay or direct their insurer to pay Settling Plaintiff's Counsel the Fee and Expense Award, or if the insurer fails to make such payment, Settling Plaintiff shall have the right to withdraw from the Settlement. In such event, the Stipulation shall be void in its entirety, and the status quo ante shall be restored.

#### **VII. CONDITIONS FOR SETTLEMENT**

The Settlement is conditioned upon the occurrence of all of the following events: (a) entry of the Notice Order; (b) final approval of the Settlement following notice to Current Humana Shareholders and the Settlement Hearing, pursuant to KRS §271B.7-400; (c) entry of the Judgment dismissing the Derivative Action with prejudice; (d) payment to Settling Plaintiff's Counsel of the Fee and Expense Award; and (e) the Judgment has become Final. If any of the conditions above are not met, the Stipulation and any Settlement documentation shall be null and void and of no force and effect, unless Settling Plaintiff's Counsel and Defendants' Counsel mutually agree in writing to proceed with the Stipulation. In the event that any of the conditions above are not met, the Parties shall be restored to their positions on the date immediately prior to the execution date of the Stipulation, and the Stipulation shall not be deemed to constitute an admission of fact by any Party, and neither the existence of the Stipulation nor its contents, shall be admissible in evidence or be referred to for any purposes in the Derivative Action or in any litigation or judicial proceeding. However, no order of the Court or modification or reversal on appeal of any order of the Court concerning the amount of any attorneys' fees, costs and expenses awarded by the Court to Settling Plaintiff's Counsel shall constitute grounds for cancellation or termination of the Stipulation.

#### **VIII. THE SETTLEMENT HEARING AND RIGHTS AS CURRENT HUMANA SHAREHOLDERS**

The Settlement Hearing shall be held before this Court on \_\_\_\_\_, 2010 at \_\_:\_\_ .m. or as soon thereafter as counsel may be heard in the courtroom of the Honorable Susan Schultz Gibson of the Jefferson Circuit Court for the Commonwealth of Kentucky, Jefferson County

Judicial Center, 700 W. Jefferson St., Louisville, Kentucky 40202 to determine: (i) whether the proposed Settlement of the Derivative Action, upon the terms set forth in the Stipulation, should be finally approved in all respects as fair, reasonable, and adequate to Humana and Current Humana Shareholders; (ii) whether the Final Order and Judgment approving the Settlement should be entered; and (iii) whether the agreed-to Fee and Expense Award to Settling Plaintiff's Counsel should be finally approved. The Settlement Hearing may be continued or adjourned from time to time by the Court at the Settlement Hearing or any continued or adjourned session thereof without further notice.

Should the Settlement be approved by the Court following the Settlement Hearing, the Court will enter Judgment dismissing the Derivative Action with prejudice and barring any claims that have been or might have been brought in any court or forum by Humana, or any Humana shareholder on Humana's behalf, relating to or arising out of allegations in the complaints filed in this Derivative Action.

Any Current Humana Shareholder may appear at the Settlement Hearing and be heard as to whether the proposed Settlement should be approved, *provided, however*, that no such person shall be heard unless, at least fourteen (14) days prior to the Settlement Hearing, such shareholder has: (1) filed with the Clerk of the Court a written objection to the Settlement setting forth: (a) the nature of the objection; (b) proof of ownership of Humana capital stock through the date of the Settlement Hearing, including the number of shares of Humana capital stock and the date of purchase; and (c) any documentation in support of such objection; and (2) if a Current Humana Shareholder intends to appear and requests to be heard at the Settlement Hearing, such shareholder must have, in addition to the requirements of (1) above, filed with the Clerk of the Court: (a) a written notice of such shareholder's intention to appear; (b) a statement that indicates the basis for such appearance; and (c) the identities of any witnesses the shareholder intends to call at the Settlement Hearing and the subjects of their testimony. If a Current Humana Shareholder files a written objection and/or written notice of intent to appear, such shareholder must also simultaneously serve copies of such notice, proof, statement, and

documentation, together with copies of any other papers or briefs such shareholder files with the Court (either by hand delivery or by first class mail) upon each of the following:

ROBBINS UMEDA LLP  
BRIAN J. ROBBINS  
GEORGE C. AGUILAR  
ASHLEY R. PALMER  
600 B Street, Suite 1900  
San Diego, CA 92101

*Plaintiff's Counsel*

FRIED, FRANK, HARRIS, SHRIVER  
& JACOBSON LLP  
WILLIAM G. MCGUINNESS  
DAVID B. HENNES  
One New York Plaza  
New York, NY 10004

*Defendants' Counsel*

Unless otherwise ordered by the Court, any Current Humana Shareholder who does not make his, her, or its objection or opposition in the manner provided shall be deemed to have waived any and all objections and opposition, and shall be forever foreclosed from making any objection to the fairness, reasonableness, and adequacy of the proposed Settlement, and shall otherwise be bound by the Judgment to be entered and the releases to be given.

#### **IX. EXAMINATION OF PAPERS AND INQUIRES**

This Notice contains only a summary of the terms of the proposed Settlement. For a more detailed statement of the matters involved in this action, reference is made to the pleadings, to the Stipulation, and to other papers filed in this Derivative Action, which may be inspected at the Office of the Clerk for the Jefferson Circuit Court for the Commonwealth of Kentucky, Jefferson County Judicial Center, 700 W. Jefferson St., Louisville, Kentucky, 40202, during business hours of each business day. In addition, a copy of the Stipulation may be found at [www.robbinsumeda.com](http://www.robbinsumeda.com) and [www.humana.com](http://www.humana.com).

Inquiries regarding this action should be addressed as follows:

ROBBINS UMEDA LLP  
BRIAN J. ROBBINS

GEORGE C. AGUILAR  
ASHLEY R. PALMER  
600 B Street, Suite 1900  
San Diego, CA 92101  
Facsimile: (619) 525-3991

*Plaintiff's Counsel*

FRIED, FRANK, HARRIS, SHRIVER  
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One New York Plaza  
New York, NY 10004  
Facsimile: (212) 859-4000

*Defendants' Counsel*

**PLEASE DO NOT CALL OR WRITE THE COURT REGARDING THIS NOTICE**

Dated: \_\_\_\_\_, 2010

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BY ORDER OF THE COURT  
JEFFERSON CIRCUIT COURT  
COMMONWEALTH OF KENTUCKY

# EXHIBIT D

COMMONWEALTH OF KENTUCKY  
JEFFERSON CIRCUIT COURT  
DIVISION 12

Case No. 08-CI-003527 (Consolidated with No. 08-CI-004236)

In Re HUMANA INC. ) Judge: Susan Schultz Gibson  
DERIVATIVE LITIGATION )  
 )  
 )  
\_\_\_\_\_)  
 )  
This Document Relates To: )  
ALL ACTIONS )  
\_\_\_\_\_)

**[PROPOSED] FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE**

This matter came before the Court for hearing pursuant to the Order of this Court, dated \_\_\_\_\_, 2010 ("Order"), on the application of the Parties for approval of the settlement ("Settlement") set forth in the Stipulation of Settlement dated June 25, 2010 (the "Stipulation"). Due and adequate notice having been given to the Current Humana Shareholders as required in said Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Final Judgment and Order of Dismissal with Prejudice (the "Judgment") incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of the Derivative Action, including all matters necessary to effectuate the Settlement, and over all parties to the Derivative Action, including Plaintiff, the Current Humana Shareholders, the Individual Defendants, and Humana.

3. The Court finds that the Settlement is fair, reasonable, and adequate as to each of the Parties, and hereby finally approves the Stipulation and the Settlement in all respects, finds that the Settlement provides substantial benefits to Humana and its shareholders, and orders the Parties to perform its terms to the extent the Parties have not already done so.

4. The Court finds that the Summary Notice of Pendency and Proposed Settlement of Shareholder Derivative Action published in the Investor's Business Daily, and the Notice of Pendency and Proposed Settlement of Shareholder Derivative Action posted on the websites of Humana and Robbins Umeda LLP, provided the best notices practicable under the circumstances of these proceedings and of the matters set forth therein, including the Settlement set forth in the Stipulation, to all Persons entitled to such notice, and said notices fully satisfied the requirements of KRS 271B.7-400 and the requirements of due process.

5. The Derivative Action and all claims contained therein, as well as all of the Released Claims, are dismissed with prejudice. As between Plaintiff, Humana, and the

Individual Defendants, the Parties are to bear their own costs, except as otherwise provided in the Stipulation.

6. Upon the entry of the Judgment, Plaintiff, on her own behalf and derivatively on behalf of Humana, Plaintiff's Counsel, and Humana shall have and by operation of this Judgment shall be deemed to have, with respect to each and every Released Claim (including Unknown Claims), fully, finally, and forever released, waived, relinquished, discharged, and dismissed any and all Released Claims against any of the Released Parties, and shall forever be barred and enjoined from instituting, commencing, or prosecuting any and all Released Claims, against any of the Released Parties. Nothing herein shall, however, bar any action or claim to enforce the terms of the Stipulation or the Judgment.

7. Upon the entry of the Judgment, Humana, each of the Individual Defendants, and their Related Persons shall have, and by operation of the Judgment shall be deemed to have fully, finally, and forever released, waived, relinquished, and discharged Plaintiff and Plaintiff's Counsel from all claims arising out of, relating to, or in connection with their institution, prosecution, assertion, or resolution of the Derivative Action. Nothing contained herein shall, however, bar any action or claim to enforce the terms of the Stipulation or the Judgment.

8. The Court finds that during the course of the Derivative Action, the Parties and their respective counsel, at all times, complied with Rule 11 of the Kentucky Rules of Civil Procedure.

9. Plaintiff's Counsel is hereby awarded \$325,000 for attorneys' fees and the reimbursement of expenses.

10. Neither the Stipulation nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Individual Defendants or the Related Persons; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Individual Defendants, or the Related Persons in any proceeding of any nature. Humana, any Individual Defendant, or Related Person may file the Stipulation and/or the

Judgment in any action that has been or may be brought against him, her, or it in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

11. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of the Settlement; and (b) the Parties for the purpose of construing, enforcing, and administering the Stipulation and Settlement, including, if necessary, setting aside and vacating this Judgment, on motion of a party, to the extent consistent with and in accordance with the Stipulation if the implementation of the Settlement fails to occur in accordance with the Stipulation.

12. This Judgment is a final, appealable judgment and should be entered forthwith by the Clerk.

IT IS SO ORDERED

This \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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JUDGE SUSAN SCHULTZ GIBSON  
CIRCUIT COURT JUDGE