

No. A08-114

STATE OF MINNESOTA
IN THE SUPREME COURT

In re UNITEDHEALTH GROUP INCORPORATED
SHAREHOLDER DERIVATIVE LITIGATION,

– and –

In re UNITEDHEALTH GROUP INCORPORATED
PSLRA LITIGATION.

On Certified Question from the
United States District Court for the District of Minnesota
The Honorable James R. Rosenbaum
District Court Nos. 06-CV-1216/1691

**RESPONDING BRIEF OF PSLRA PLAINTIFFS
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND
ALASKA PLUMBING AND PIPEFITTING INDUSTRY PENSION TRUST**

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
DARREN J. ROBBINS
MICHAEL J. DOWD (*Pro Hac Vice*)
ARTHUR C. LEAHY
ANDREW J. BROWN (*Pro Hac Vice*)
KEVIN K. GREEN (*Pro Hac Vice*)
ANNE L. BOX
RAMZI ABADOU
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

REINHARDT WENDORF &
BLANCHFIELD
GARRETT D. BLANCHFIELD, JR.
(#209855)
E-1250 First National Bank Building
332 Minnesota Street
St. Paul, MN 55101
Telephone: 651/287-2100
651/287-2103 (fax)

Attorneys for PSLRA Plaintiffs
California Public Employees' Retirement System and
Alaska Plumbing and Pipefitting Industry Pension Trust

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. ARGUMENT.....	2
A. Neither <i>Janssen</i> nor Minnesota Statute §302A.241 Provide the Answer to the Certified Question	2
B. Courts Evaluate a Proposed Settlement of a Shareholder Derivative Action Under the Familiar Fair/Reasonable/ Adequate Inquiry	5
C. Any Other Legal Standard for Evaluating Derivative Settlements Would Inject Unnecessary Complexity and Inconsistency into Minnesota Law	8
D. Under the Present Circumstances, the Business Judgment Rule Has Minimal Force.....	12
E. To the Extent a “Majority” Rule May Be Gleaned, Other Jurisdictions Favor Substantive Review of an SLC’s Recommendations	17
III. CONCLUSION.....	21
CERTIFICATE OF COMPLIANCE.....	23
DECLARATION OF SERVICE BY MAIL	24

TABLE OF AUTHORITIES

	Page
CASES	
<i>Alford v. Shaw</i> , 358 S.E.2d 323 (N.C. 1987)	15, 17, 18
<i>Alford v. Shaw</i> , 398 S.E.2d 445 (N.C. 1990)	18
<i>Auerbach v. Bennett</i> , 393 N.E.2d 994 (N.Y. 1979).....	6, 17, 18
<i>Bell Atl. Corp. v. Bolger</i> , 2 F.3d 1304 (3d Cir. 1993)	10
<i>Berger v. Dyson</i> , 111 F. Supp. 533 (D.R.I. 1953)	14
<i>Burks v. Lasker</i> , 441 U.S. 471 (1979).....	7, 11, 16
<i>Cramer v. Gen. Tel. & Elecs. Corp.</i> , 582 F.2d 259 (3d Cir. 1978)	11
<i>Drilling v. Berman</i> , 589 N.W.2d 503 (Minn. Ct. App. 1999), review denied (Minn. May 18, 1999)	4
<i>Electra Inv. Trust P.L.C. v. Crews</i> , No. 15890, 1999 Del. Ch. LEXIS 36 (Del. Ch. Feb. 24, 1999)	15
<i>Genzer v. Cunningham</i> , 498 F. Supp. 682 (E.D. Mich. 1980)	18
<i>Goodyear Tire & Rubber Co. v. Dynamic Air, Inc.</i> , 702 N.W.2d 237 (Minn. 2005)	8
<i>Greenspun v. Bogan</i> , 492 F.2d 375 (1st Cir. 1974).....	7, 15
<i>Hickman v. Taylor</i> , 329 U.S. 495 (1947).....	10

	Page
<i>In re Cendant Corp., Derivative Action Litig.</i> , 232 F. Supp. 2d 327 (D.N.J. 2002).....	9
<i>In re Gen. Tire & Rubber Co. Sec. Litig.</i> , 726 F.2d 1075 (6th Cir. 1984).....	6
<i>In re Guidant S'holders Derivative Litig.</i> , 841 N.E.2d 571 (Ind. 2006).....	5
<i>In re PSE&G S'holder Litig.</i> , 801 A.2d 295 (N.J. 2002).....	19
<i>Janssen v. Best & Flanagan</i> , 662 N.W.2d 876 (Minn. 2003).....	2, 3, 19
<i>Joy v. North</i> , 692 F.2d 880 (2d Cir. 1982).....	17
<i>Kahn v. Sullivan</i> , 594 A.2d 48 (Del. 1991).....	7
<i>Lasker v. Burks</i> , 567 F.2d 1208 (2d Cir. 1979), <i>rev'd and remanded by</i> <i>Burks v. Lasker</i> , 441 U.S. 471 (1979).....	16
<i>Lewis on behalf of Citizens Sav. Bank & Trust Co. v. Boyd</i> , 838 S.W.2d 215 (Tenn. Ct. App. 1992).....	18
<i>McMenomy v. Ryden</i> , 276 Minn. 55, 148 N.W.2d 804 (1967).....	16
<i>Millsap v. Am. Family Corp.</i> , 430 S.E.2d 385 (Ga. Ct. App. 1993).....	19
<i>Nat'l Power & Paper Co. v. Rossman</i> , 122 Minn. 355, 142 N.W. 818 (1913).....	12
<i>O'Keefe v. Mercedes-Benz United States, LLC</i> , 214 F.R.D. 266 (E.D. Pa. 2003).....	11
<i>Ruskay v. Waddell</i> , 552 F.2d 392 (2d Cir. 1977).....	8

	Page
<i>Saylor v. Lindsley</i> , 456 F.2d 896 (2d Cir. 1972)	15
<i>Small v. Fritz Cos.</i> , 65 P.3d 1255 (Cal. 2003)	21
<i>SST, Inc. v. City of Minneapolis</i> , 288 N.W.2d 225 (Minn. 1979)	7
<i>State by Wilson v. St. Joseph's Hosp.</i> , 366 N.W.2d 403 (Minn. Ct. App. 1985)	7
<i>Sys. Meat Co. v. Stewart</i> , 163 N.W.2d 789 (Neb. 1969)	14
<i>United Founders Life Ins. Co. v. Consumers Nat'l Life Ins. Co.</i> , 447 F.2d 647 (7th Cir. 1971)	11
<i>Whitman v. Am. Trucking Ass'ns</i> , 531 U.S. 457 (2001)	5
<i>Zapata Corp. v. Maldonado</i> , 430 A.2d 779 (Del. 1981)	<i>passim</i>

STATUTES, RULES AND REGULATIONS

Minnesota Statute	
§302A.241	2, 4, 5, 7
§302A.241, subd. 1	13
§480.065, subd. 3	3
Minnesota Statute Annotated (West Supp. 2000)	
§302A.001	19
Minnesota Rules of Civil Procedure	
Rule 23.05	7
Rule 23.09	<i>passim</i>
Federal Rules of Civil Procedure	
Rule 23	13
Rule 23.1	<i>passim</i>

SECONDARY AUTHORITIES

Richard C. Brown, *Shareholder Derivative Litigation and the Special Litigation Committee*
 43 U. Pitt. L. Rev. 601 (1982) 13

George W. Dent, Jr., *The Power of Directors to Terminate Shareholder Litigation: The Death of the Derivative Suit?*
 75 Nw. U. L. Rev. 96 (1980) 15

13 William Meade Fletcher, *Fletcher Cyc. Corp.* (2007)
 §6020 17

William E. Haudek, *The Settlement and Dismissal of Stockholders' Actions – Part II: The Settlement*
 23 Sw. L.J. 765 (1969)..... 10, 11, 19, 20

I. INTRODUCTION

The Court has before it seven opening briefs, but they coalesce around two approaches to answering the certified question. The majority viewpoint set forth in the briefing is the better one.

In their opening brief, the California Public Employees' Retirement System and the Alaska Plumbing and Pipefitting Industry Pension Trust (collectively, "PSLRA plaintiffs") argued that when asked to approve a proposed settlement of a shareholder derivative action, a trial judge is required to scrutinize the terms to ensure they are fair, reasonable and adequate. Citing many of the same authorities, the Minnesota Attorney General and the federal derivative plaintiffs urge virtually the same inquiry for many of the same reasons. This concurrence of positions is notable given the Attorney General's valuable perspective on the policy considerations and how this Court's decision will affect the public interest. Likewise, if the relevant law actually dictated substantial judicial deference to the settlement recommendation of a special litigation committee ("SLC"), the federal derivative plaintiffs had every reason to say so to preserve the settlement terms they negotiated. Although appearing to urge more deference to the SLC than their federal colleagues, the state derivative plaintiffs – also a party to the proposed settlement – likewise acknowledge the fair/reasonable/adequate test long governing court review in this area.

Defendants and former UnitedHealth Group Inc. ("UnitedHealth") executives William McGuire and David Lubben urge a sharp departure from this widely accepted standard. They seek to settle the derivative claims brought against them, but McGuire and Lubben now clash with their settlement brethren, the federal and state derivative plaintiffs, on the legal

inquiry governing court review of the proposal. According to McGuire and Lubben, under Minnesota law a trial judge has no power to question the settlement terms themselves so long as the SLC proves it is independent and acted in good faith. This is so, they assert, even where the SLC's recommendations are unaccompanied by any factual basis to enable the court's review. Echoing this viewpoint is UnitedHealth's Board of Directors ("Board"), whose members are also facing derivative claims against them. The Board has filed a brief urging great deference to the SLC despite purportedly delegating prosecution of the state and federal derivative actions to the SLC.

All these contradictions aside, for the reasons elaborated below, the unorthodox version of the business judgment rule urged in the defense briefs, greatly restricting court review of proposed derivative settlements, is untenable. The investing public is best protected if courts are able, as they did for decades before the SLC device existed, to scrutinize the settlement terms to ensure they are fair, reasonable and adequate.

II. ARGUMENT

A. Neither *Janssen* nor Minnesota Statute §302A.241 Provide the Answer to the Certified Question

The central thesis floated by Lubben, McGuire and the Board ("defendants," when referenced collectively) is that "the answer to the certified question is found in this Court's decision in *Janssen v. Best & Flanagan*, 662 N.W.2d 876 (Minn. 2003)." Opening Brief of David J. Lubben on Certified Question with Appendix ("Lubben Brief") at 5; *see also* Brief of William W. McGuire on Certified Question ("McGuire Brief") at 2 (urging this Court to "confirm the precedent it set in *Janssen*"); Opening Brief of the Members of the Board of

Directors of UnitedHealth Group Incorporated (“Board Brief”) at 8 (claiming to seek “a logical extension of *Janssen*”).

Defendants’ premise is mistaken. *Janssen* did not address, even obliquely, the standard a court should apply “in deciding whether to approve a proposed settlement of a shareholder derivative action.” Order, Feb. 1, 2008. Indeed, if *Janssen* really were dispositive, this entire proceeding would have been unnecessary. Review by certified question occurs when “there is no controlling appellate decision, constitutional provision, or statute of this state.” Minn. Stat. §480.065, subd. 3. This Court’s choice to accept the certified question belies the assertion that “twenty years of Minnesota law” settled the issue before it got here. McGuire Brief at 19.

A controlling rule of law thus cannot be extracted from one footnote in *Janssen*. McGuire Brief at 15-16; Board Brief at 19-20. Along the same lines, defendants attach undue weight to the following quote: “If the board properly delegates its authority to act to the special litigation committee, the court will extend deference to the committee’s decision under the business judgment rule.” *Janssen v. Best & Flanagan*, 662 N.W.2d 876, 884 (Minn. 2003). This sentence does not foreclose substantive examination of an SLC’s recommendation. More fundamentally, this Court emphasized that an SLC cannot have a “mere advisory role” but, rather, must possess unrestricted “power to control the litigation.” *Id.* Absent this authority, an SLC lacks “a sufficient legitimacy to warrant deference to the committee’s decision by the court.” *Id.* It is interesting that the Board calls attention to this passage from *Janssen*. The Board fails to explain how it can speak for “all the shareholders of the corporation” here while supposedly delegating this very authority to the SLC in these

derivative actions. *Compare* Board Brief at 9 with A319 (Board resolution according SLC “complete power and authority” to, among other things, “analyze the legal rights and remedies” held by UnitedHealth).¹

Similarly unpersuasive is defendants’ suggestion that the Legislature put the certified question to rest via Minn. Stat. §302A.241 itself and the backdrop to its 1989 enactment. As McGuire acknowledges: “The Minnesota statute authorizing the use of SLCs does not address judicial review of SLC decisions.” McGuire Brief at 16. “The history of the statute,” he nonetheless insists, “indicates that the Minnesota legislature fully expected that review would be limited to the issues of independence and good faith.” *Id.* In fact, the history of the statute shows that the Legislature expressly rejected the “one size fits all” mode of judicial inquiry defendants suggest.

McGuire recognizes that as a result of the 1989 repeal, “the question of judicial review would simply be left to the courts.” *Id.* at 17. But, his passing citation to *Drilling v. Berman*, 589 N.W.2d 503 (Minn. Ct. App. 1999), *review denied* (Minn. May 18, 1999), papers over the relevant legislative history summarized in that decision. Quoting Senator Luther, the Court of Appeals explained that “[t]he repeal represented ‘a commitment to let the caselaw develop’” and “a desire to give our courts flexibility.” *Id.* at 506.² Restricting

¹ Record citations are to the Appendix in Support of Opening Brief of PSLRA Plaintiffs California Public Employees’ Retirement System and Alaska Plumbing and Pipefitting Industry Pension Trust.

² Here, as throughout, citations are omitted unless otherwise indicated.

courts to one line of judicial inquiry in every derivative case – even a suit involving the settlement standards under Minn. R. Civ. P. 23.09 and Fed. R. Civ. P. 23.1 – would engraft just the sort of inflexibility the Legislature rejected.

Taking a slightly different tack, the Board seeks to wrest from purported textual clues in Minn. Stat. §302A.241 a grudging standard that would prohibit judges from examining the settlement terms. Board Brief at 21-22, 26. The Legislature, however, does not “hide elephants in mouseholes.” *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001). Significant statutory interpretations are not usually tethered to an “indirect statutory hint.” *In re Guidant S’holders Derivative Litig.*, 841 N.E.2d 571, 574 (Ind. 2006). Hints, moreover, are not required here. As discussed below, the straightforward answer to the certified question is found in Minnesota Rule 23.09 and analogous Federal Rule 23.1.

B. Courts Evaluate a Proposed Settlement of a Shareholder Derivative Action Under the Familiar Fair/Reasonable/Adequate Inquiry

Joined by the Attorney General and both sets of derivative plaintiffs, the PSLRA plaintiffs respectfully submit that the proper focal point is whether an SLC’s proposed settlement of a shareholder derivative action triggers, as in any other derivative case, judicial review for the fairness, reasonableness and adequacy of its terms. If the answer is yes – as it must be – then the nature of a trial judge’s review is necessarily substantive. One of the settling parties distills the nature of the inquiry: “[I]n the context of approving a derivative settlement, the standards of review under Fed. R. Civ. P. 23.1 or Minn. R. Civ. P. 23.09 govern, not the Minnesota business judgment rule.” Opening Brief of Lead Plaintiffs in the Federal Shareholder Derivative Litigation (“Fed. Deriv. Plaintiffs’ Brief”) at 14. Notably,

defendants do not dispute that if the fair/reasonable/adequate test applies, then court review of the SLC's process, without more, is insufficient. The settlement terms themselves are on the judicial table.

Because the fair/reasonable/adequate test is inconsistent with the limited review of SLC recommendations to terminate under *Auerbach v. Bennett*, 393 N.E.2d 994 (N.Y. 1979), defendants are forced to contend that settlement of a shareholder derivative action is subject to the same judicial evaluation as an SLC's proposed termination. For example, according to McGuire, "[t]here is no principled basis for concluding that the decision to settle [derivative] claims on specific terms should be subject to any less deference" than an SLC proposal to terminate. McGuire Brief at 10 (emphasis omitted). Similarly, the Board suggests the following answer to the certified question: "If the business judgment of a special litigation committee to settle is being reviewed, the court reviews for good faith and independence, and defers to the decision of the special litigation committee if it does not find those qualities lacking." Board Brief at 21 n.2; *see also id.* at 9 (same suggestion).

No authority is cited for these assertions, however. The *ipse dixit* must yield to Minnesota Rule 23.09, and analogous Federal Rule 23.1 and its wealth of implementing case law. In the words of an illustrative decision, the proponents of a derivative settlement – even when an SLC is involved – must "persuad[e] the court that their compromise is fair, reasonable and adequate." *In re Gen. Tire & Rubber Co. Sec. Litig.*, 726 F.2d 1075, 1080 (6th Cir. 1984). More than three decades ago, the First Circuit described as "well established" the principle that "a court should not merely rubber stamp whatever settlement is proposed by the parties to a shareholder derivative action. A court must, instead, exercise

judgment sufficiently independent and objective to safeguard the interests of shareholders not directly involved in the action.” *Greenspun v. Bogan*, 492 F.2d 375, 378 (1st Cir. 1974). State courts agree. *See, e.g., Kahn v. Sullivan*, 594 A.2d 48, 59 (Del. 1991) (even where SLC recommends approval of proposed derivative settlement, trial judge determines “whether the settlement is reasonable”).

This searching inquiry has no parallel in the termination context. Consequently, defendants cannot avoid Minnesota Rule 23.09 and Federal Rule 23.1 by contending that this case actually involves a proposed termination, just with settlement terms as “part” or a “result” of the termination. McGuire Brief at 3; Lubben Brief at 3; Board Brief at 7. With all respect, this description is an exercise in semantics.

To the extent a federal court, on the matter of judicial deference to an SLC, would look to state law pursuant to *Burks v. Lasker*, 441 U.S. 471 (1979), the same legal benchmark emanates from the relevant sources of Minnesota law. As the PSLRA plaintiffs explained in their opening brief, Minnesota Rule 23.09 is logically given the same interpretation as both Federal Rule 23.1 and Minnesota Rule 23.05. The latter rule mandates judicial scrutiny of proposed class action settlements for whether the compromise is “fair, adequate, reasonable, and is not the product of collusion between the parties.” *State by Wilson v. St. Joseph’s Hosp.*, 366 N.W.2d 403, 406 (Minn. Ct. App. 1985) (quoting *SST, Inc. v. City of Minneapolis*, 288 N.W.2d 225, 231 (Minn. 1979)).

The Legislature, of course, was on notice of this judicial interpretation when it adopted the current SLC provision, Minn. Stat. §302A.241, in 1989. As this Court stated in answering another certified question recently: “We generally presume that a statute is

consistent with the common law and, if the legislature intends to enact a statute that abrogates the common law, the legislature will do so by express wording or necessary implication.” *Goodyear Tire & Rubber Co. v. Dynamic Air, Inc.*, 702 N.W.2d 237, 244 (Minn. 2005). Yet, nothing indicates the Legislature intended to abrogate the fair/reasonable/adequate inquiry long applied to court review of settlements in representative actions, just because an SLC supports the proposed compromise.

Indeed, the settling parties have already recognized that Minnesota Rule 23.09 and Federal Rule 23.1 control the court’s judicial inquiry in the state and federal derivative suits arising out of the UnitedHealth backdating scandal. Although most likely superfluous – the relevant law always applies – the federal derivative plaintiffs explain: “The SLC, derivative Plaintiffs, and the settling Defendants explicitly conditioned final resolution of the case upon approval by the federal and state courts under Fed. R. Civ. P. 23.1 and Minn. R. Civ. P. 23.09.” Fed. Deriv. Plaintiffs’ Brief at 3.

C. Any Other Legal Standard for Evaluating Derivative Settlements Would Inject Unnecessary Complexity and Inconsistency into Minnesota Law

The settling parties’ acknowledgment of the controlling rules of civil procedure is prudent given the incoherence that would result in Minnesota law if any other test were applied. There is no reason to subject settlement of derivative and class actions to divergent judicial inquiries. The same concerns arise in both with regard to protecting the stockholders who would be bound, via *res judicata*, by the final result. As in class actions, “it is not uncommon for general releases to be granted in settlements of derivative suits.” *Ruskay v. Waddell*, 552 F.2d 392, 394 n.4 (2d Cir. 1977).

Adding another layer of inconsistency, if defendants' view of Minnesota Rule 23.09 were adopted, then derivative settlements would be subject to two lines of inquiry depending on whether an SLC backs the proposed compromise. Defendants' suggested bifurcation, however, lacks any textual foundation. In the words of one of the settlement proponents: "Rule 23.09 does not except a settlement that is reached with a special litigation committee's participation from a settlement of a derivative action without a special litigation committee's involvement." Opening Brief of State Derivative Action Plaintiffs (Limited Intervenors) in the Federal Shareholder Derivative Litigation and Appendix ("State Deriv. Plaintiffs' Brief") at 9. No such awkward boundary is drawn, either, under Federal Rule 23.1. *See, e.g., In re Cendant Corp., Derivative Action Litig.*, 232 F. Supp. 2d 327, 332, 336 (D.N.J. 2002). Defendants' distinction between class and derivative settlements, and between certain kinds of derivative settlements, just because an SLC is part of the picture, would undermine the clarity of Minnesota law.

On a related note, defendants contend that an SLC's proposed termination "without requiring payment or other remediation" should trigger "closer scrutiny" than a settlement "getting the company something in exchange." McGuire Brief at 10; *see also* Lubben Brief at 9 (urging this Court to "afford even greater deference to the SLC's decision to compromise the corporation's claims"). Although perhaps superficially enticing – the SLC is getting something for the company, so the court should be more deferential – this argument overlooks a fundamental point.

In contrast to a contested involuntary termination, where the derivative plaintiff fights a dismissal giving the corporation nothing, the settlement stage in representative actions

usually has a collegial atmosphere. The “adversarial process” that would otherwise unearth the flaws in each side’s position vanishes. *Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1310 (3d Cir. 1993). This lack of adversarial vetting is unusual in our system. In the interest of truth and transparency, “a common law trial is and always should be an adversary proceeding.” *Hickman v. Taylor*, 329 U.S. 495, 516 (1947) (Jackson, J., concurring). Yet, when a derivative action is settled, former opponents in litigation suddenly join forces to present their joint settlement terms in the best light possible – as the briefing in this Court colorfully illustrates.³

Although there is typically an opportunity for shareholders to object to a proposed derivative settlement affecting their corporation, this rarely provides substantial help to the trial judge. As a logistical matter, the vast majority of shareholders are unable to attend the fairness hearing. Most have too little at stake financially, in any event, to supply sufficient incentive for meaningful participation as objectors. It has long been a practical reality that “[f]ew objectors own enough stock to warrant the payment of cash fees to their lawyers.”

William E. Haudek, *The Settlement and Dismissal of Stockholders’ Actions – Part II: The*

³ In its certification order, the United States District Court emphasized that it “has not yet been asked to approve the SLC’s proposed settlement.” A358 (PSLRA plaintiffs’ appendix). Hence, the chorus of self-congratulation from the settlement proponents – who admit they have not even finalized their agreement – is premature. *See, e.g.*, Fed. Deriv. Plaintiffs’ Brief at 2 (lauding proposed compromise as “unprecedented and historic”), 7 (“unprecedented and historic tripartite mediation”), 8 (“groundbreaking historic settlement”); State Deriv. Plaintiffs’ Brief at 9 (“extraordinary three-way arm’s-length negotiation and mediation”), 16 (“substantial and immediate relief without the risks and expenses of further litigation”); Board Brief at 2, 7 (proclaiming settlement terms “substantial”).

Settlement, 23 Sw. L.J. 765, 805 (1969) (“*Settlement and Dismissal of Stockholders’ Actions*”). The shareholders, “however critical they may be of the settlement, do not easily find competent counsel to enter the lists, battle the united front of the proponents, and struggle with the court’s natural tendency to favor the compromise.” *Id.* For all these reasons, “helpful guidance” from the shareholders is usually wanting. *Id.* More often in representative actions, the court receives “canned objections filed by professional objectors” aimed at “extract[ing] a fee.” *O’Keefe v. Mercedes-Benz United States, LLC*, 214 F.R.D. 266, 295 n.26 (E.D. Pa. 2003).

Taking the non-adversarial nature of a settlement into account, Federal Rule 23.1’s paramount purpose is “to prevent plaintiffs from selling out their fellow shareholders.” *Burks*, 441 U.S. at 485 n.16. Strictly speaking, Federal Rule 23.1’s court approval prerequisite does not apply “where the plaintiffs’ action is involuntarily dismissed by a court,” because a plaintiff contesting dismissal will make an adversarial presentation. *Id.* By contrast, in the settlement scenario, “the plaintiff or his counsel might be tempted to enter into a collusive settlement with the defendants.” *Cramer v. Gen. Tel. & Elecs. Corp.*, 582 F.2d 259, 269 (3d Cir. 1978).

In light of these considerations, rather than “magnif[y]ing the reasons for broad judicial deference” (Lubben Brief at 11), the circumstances in the settlement context “may charge [the judge] with an additional responsibility.” *United Founders Life Ins. Co. v. Consumers Nat’l Life Ins. Co.*, 447 F.2d 647, 655 (7th Cir. 1971). By glossing over

Minnesota Rule 23.09 and Federal Rule 23.1, defendants fail to support their theory that court review of proposed derivative settlements should be a hands-off exercise.⁴

D. Under the Present Circumstances, the Business Judgment Rule Has Minimal Force

Defendants' counterpoint to Minnesota Rule 23.09 and Federal Rule 23.1 can be summed up in a few words – the “business judgment rule.” In the particular context here, however, this tenet of corporate law does not have a sweeping impact. The Attorney General pinpoints the flaw in defendants' position: “Viewed properly, the business judgment rule protects directors from liability for certain business decisions – not their decisions to settle a lawsuit.” Brief and Appendix of the State of Minnesota, by Its Attorney General, Lori Swanson, as *Amicus Curiae* (“AG Brief”) at 5 (emphasis omitted).

For purposes of the business judgment rule, defendants falsely equate an SLC with the permanent board of directors that appoints it. “Although the general contours of a litigation decision made by a special committee may superficially resemble those of a litigation

⁴ Before modern rules of civil procedure, this Court recognized the need for active judicial supervision of derivative litigation where, as with a settlement, there is risk of collusion coupled with stringent fiduciary duties owed to persons not before the court. In *Nat'l Power & Paper Co. v. Rossman*, 122 Minn. 355, 142 N.W. 818 (1913), a corporation sued two of its directors for a deceptive scheme calculated to line their own pockets at the corporation's expense. The board of directors changed membership during the litigation. Following the reshuffling, the company promptly sought dismissal of the action through a collusive settlement with the directors. After the trial court entered a dismissal, stockholders moved to intervene and to vacate the dismissal, both of which the trial court granted. Upholding these rulings, this Court held, among other things: “Ordinarily the plaintiff has the absolute right to dismiss his action, but a plaintiff who acts in a fiduciary capacity has not such absolute right. If he fails to act in good faith toward those whom he serves, and acts in collusion with the defendant, the dismissal may be set aside.” *Id.* (syllabus ¶5).

decision made by a board of directors which is free of any self-interest taint, there are fundamental differences in the group dynamics which produce the two types of decisions.” Richard C. Brown, *Shareholder Derivative Litigation and the Special Litigation Committee*, 43 U. Pitt. L. Rev. 601, 624 (1982). Among these differences, an SLC is “asked to make a decision which may subject [its] colleagues on the board to the potential of personal liability if it is decided that the derivative action should be allowed to proceed” or, as here, settled for consideration paid by the board members. *Id.*

An SLC, moreover, is not akin to a permanent board making business judgments necessary to run a company on a daily basis. A hand-picked SLC is an ephemeral tool invoked to make a recommendation about the fate of derivative claims in litigation. By statutory limitation, an SLC may only “consider legal rights or remedies of the corporation and whether those rights and remedies should be pursued.” Minn. Stat. §302A.241, subd. 1. Once the SLC has done this, its work is done. Derivative actions normally challenge past misconduct, not corporate planning for the future. No issue is presented, therefore, of the judiciary “second-guessing business judgments” (McGuire Brief at 10), much less “direct[ing] the business affairs of the corporation.” Board Brief at 12.

The Board nonetheless contends that courts overstep their bounds if they question “what sort of a remedy a corporation should accept” as part of a settlement. *Id.* at 13. The federal derivative plaintiffs with whom the Board would settle, however, recognize that the judiciary possesses just this authority. As their counsel told the United States District Court, if the proposed derivative settlement here is “not adequate,” then the proposal “ought not be approved under the requirements of [Federal] Rule 23, and it’s back to the drawing board for

I believe both the SLC and us.” A213. State and federal courts have long carried out their judicial function in this realm without disrupting the modern corporation’s ability to control its own destiny. *See, e.g., Sys. Meat Co v. Stewart*, 163 N.W.2d 789 (Neb. 1969); *Berger v. Dyson*, 111 F. Supp. 533 (D.R.I. 1953).

Although corporate boards certainly have the statutory power to appoint an SLC, the judicial deference to the committee is another matter. The Supreme Court of Delaware correctly concluded that the business judgment rule is less pertinent than the “structural bias” problems inherent in the SLC device:

We are not satisfied . . . that acceptance of the “business judgment” rationale at this stage of derivative litigation is a proper balancing point. While we admit an analogy with a normal case respecting board judgment, it seems to us that there is sufficient risk in the realities of a situation like the one presented in this case to justify caution beyond adherence to the theory of business judgment.

Zapata Corp. v. Maldonado, 430 A.2d 779, 787 (Del. 1981). The minimal force given the business judgment rule in this context also reflects that “courts and not litigants should decide the merits of litigation.” *Id.* at 789 n.18.

Notably, when a derivative settlement is proposed, courts do not even treat the backing of an unbiased permanent board of directors as dispositive. The support of a permanent board in such cases (where there is no SLC because the board members are not facing suit) is not “conclusive in itself,” but is merely “[o]ne of the factors to be considered.” *Berger*, 111 F. Supp. at 535. It would be illogical for a settlement proposed by an SLC to receive more judicial deference than a settlement proposed by an untainted permanent board. Courts, in fact, reject this approach. As one decision explained, an SLC recommendation to

settle is “not binding on the court,” but “the court may choose to rely on such recommendation.” *Alford v. Shaw*, 358 S.E.2d 323, 327 (N.C. 1987).

Deference to an SLC is especially unwarranted where, as here, the SLC declines to provide a factual record upon which to assess the reasonableness of its recommendations. In the words of a Delaware decision rejecting an SLC’s proposed settlement: “The mere recital of the SLC’s conclusion that a particular claim is not worth pursuing effectively leaves this Court with no record to review. [The Court] cannot determine whether the decision is reasonable in light of the facts, because the SLC provides no facts.” *Electra Inv. Trust P.L.C. v. Crews*, No. 15890, 1999 Del. Ch. LEXIS 36, at *12, *17 (Del. Ch. Feb. 24, 1999) (faulting SLC for “offer[ing] pat remedies without making findings of fact”). In short, “the district court must possess sufficient evidentiary facts,” provided by the settling parties, “to show the fairness of the proposed settlement.” *Greenspun*, 492 F.2d at 378; *see also Saylor v. Lindsley*, 456 F.2d 896, 904 (2d Cir. 1972). Quite simply, the “cogency of the explanation” matters. George W. Dent, Jr., *The Power of Directors to Terminate Shareholder Litigation: The Death of the Derivative Suit?*, 75 Nw. U. L. Rev. 96, 129 (1980) (italics and capitalization omitted) (arguing that SLC “should be required to describe with particularity the facts and assumptions” underlying its recommendations).

Contrary to what has been implied, the fair/reasonable/adequate judicial inquiry does not undermine the general principle that “settlements are favored as a matter of public policy.” Lubben Brief at 5. Defendants erroneously equate court review of proposed derivative settlements with automatic hostility to them. Settlements that are truly fair, reasonable and adequate will be approved. Only the proponents of unsatisfactory or

collusive settlements “selling out” the stockholders, *Burks*, 441 U.S. at 485 n.16, have reason to worry about the court’s role in providing the final imprimatur. Court rejection, it appears from all the case law and literature, is generally rare. This may reflect that court approval of derivative settlements has been required for decades, and settling parties are accordingly motivated to reach a bargain the court will accept.

In addition, court approval facilitates certainty and finality that the derivative claims asserted against the corporate fiduciaries are put to rest. *See McMenemy v. Ryden*, 276 Minn. 55, 65, 148 N.W.2d 804, 811 (1967) (noting res judicata effect “if recovery is had in a derivative action”). As the Attorney General observes, far from unjustly interfering with the corporate machinery, “the character and quality of an SLC’s decision will be enhanced with the knowledge that meaningful judicial review will follow.” AG Brief at 15. This scrutiny also bolsters confidence in the courts where, as here, relief is sought in the civil justice system for the public and private harm inflicted by a massive corporate scandal.⁵

⁵ To be clear, none of this is meant to impugn the former members of this Court – “persons of unquestioned integrity and probity” – who served on the SLC in the present case. A350. Retired appellate judges, in fact, have long served on SLCs in derivative litigation. *See, e.g., Lasker v. Burks*, 567 F.2d 1208, 1210 (2d Cir. 1979) (former Chief Judge of New York Court of Appeals prepared the report), *rev’d and remanded by Burks v. Lasker*, 441 U.S. 471 (1979). Nevertheless, for all the reasons the PSLRA plaintiffs have discussed, courts and commentators, for just as long, have sought to fashion rules taking into account the “realities” under which such committees operate. *Zapata*, 430 A.2d at 787.

E. To the Extent a “Majority” Rule May Be Gleaned, Other Jurisdictions Favor Substantive Review of an SLC’s Recommendations

Calling the “*Auerbach* approach” the “traditional rule,” McGuire seeks to imply that a majority of jurisdictions follow what the New York Court of Appeals said in 1979. McGuire Brief at 12. The defense briefs provide virtually identical string citations to a handful of decisions agreeing with *Auerbach*. *Id.* at 14; Board Brief at 24.

Importantly, however, none of defendants’ cases applied *Auerbach* to a proposed settlement implicating the widely recognized judicial function to scrutinize the terms for whether they are fair, reasonable and adequate. *See* 13 William Meade Fletcher, *Fletcher Cyc. Corp.* §6020 (2007) (surveying various authorities nationwide, including Minnesota Rule 23.09, requiring court approval of derivative settlements). The PSLRA plaintiffs are unaware of any case or jurisdiction holding that an SLC-endorsed settlement is not subject to the familiar fair/reasonable/adequate test. To the contrary, “it would be difficult for the court to determine whether the interests of shareholders or creditors would be substantially affected by such discontinuance, dismissal, compromise, or settlement without looking at the proposed action substantively.” *Alford*, 358 S.E.2d at 327; *see also Joy v. North*, 692 F.2d 880, 889 (2d Cir. 1982) (noting need for court approval of settlements and rejecting rationale of *Auerbach*).

More generally, the jurisprudential trend favors substantive judicial scrutiny of SLC recommendations. To be sure, *Auerbach* drew buzz and attention in the field when it was decided in 1979. This may have been because, among state appellate decisions, *Auerbach* had the stage virtually to itself until *Zapata* came down in 1981. Early federal decisions

seeking to predict state law were heavily influenced by *Auerbach* but, as one federal judge cautioned before *Zapata*, “the highest court of Delaware has not yet ruled on the question presented.” *Genzer v. Cunningham*, 498 F. Supp. 682, 688 (E.D. Mich. 1980). It did not take long, especially after *Zapata*, for the *Auerbach* approach to be revealed as insufficiently protective of shareholders.

The Supreme Court of North Carolina thoroughly examined this area of law after *Zapata*. By 1987, North Carolina’s highest court was able to observe: “The recent trend among courts which have been faced with the choice of applying an *Auerbach*-type rule of judicial deference or a *Zapata*-type rule of judicial scrutiny has been to require judicial inquiry on the merits of the special litigation committee’s report.” *Alford*, 358 S.E.2d at 325-26. Adopting a “modified *Zapata* rule” in an opinion issued on rehearing, the court explained:

We interpret the trend away from *Auerbach* among other jurisdictions as an indication of growing concern about the deficiencies inherent in a rule giving great deference to the decisions of a corporate committee whose institutional symbiosis with the corporation necessarily affects its ability to render a decision that fairly considers the interest of plaintiffs forced to bring suit on behalf of the corporation.

Id. at 326; *see also Alford v. Shaw*, 398 S.E.2d 445, 452-53 (N.C. 1990) (post-remand opinion reiterating holding that SLC’s substantive conclusions are subject to judicial scrutiny).

By the early 1990s, the standards applied by most states had come to rest. *See Lewis on behalf of Citizens Sav. Bank & Trust Co. v. Boyd*, 838 S.W.2d 215, 223-24 (Tenn. Ct. App. 1992) (summarizing these approaches). In 1993, the Georgia Court of Appeals noted

that *Zapata*'s two-step analysis was followed by "the majority of states." *Millsap v. Am. Family Corp.*, 430 S.E.2d 385, 387 (Ga. Ct. App. 1993). The influence of Delaware law on this subject, as others in corporate law, is unsurprising. As the SLC here recognized: "Courts in Minnesota frequently look to Delaware law when addressing matters of corporate fiduciary duty." A282 n.32. More recent decisions agree with the sensible assumption underlying *Zapata*. Especially after the "recent disclosures of flagrant irregularities in corporate financial statements" and other corporate scandals, "a heavy dose of pragmatism is indispensable in reviewing the reasonableness of a Board's decision to terminate derivative shareholder litigation." *In re PSE&G S'holder Litig.*, 801 A.2d 295, 320-21 (N.J. 2002) (Stein, J., concurring). Courts should be mindful that "only a scrupulous and painstaking examination of the record will be sufficient to assure the court that the board's discretion has been exercised reasonably and responsibly." *Id.* at 321.

Indeed, something is fundamentally amiss in the settlement context about restricting the judicial inquiry to the SLC's process. The result, not the process, ultimately binds the shareholders. "In considering the merits of a settlement, the court and the class are naturally interested in the result achieved rather than in the negotiations by which it [was] reached." *Settlement and Dismissal of Stockholders' Actions*, 23 Sw. L.J. at 771. If a trial judge is somehow shackled from passing on, for example, the monetary adequacy of a proposed derivative settlement, then the "accountability" stressed by this Court, and the drafters of the Minnesota Business Corporation Act, would be a hollow promise. *Janssen*, 662 N.W.2d at 882; Report to the Senate by Advisory Task Force on Corporation Law (1981), reprinted in Minn. Stat. Ann. §302A.001 (West Supp. 2000). "An inadequate compromise reached by

the directors, no matter how honestly, on the basis of a mistaken appraisal of the claims, is not in the corporate interest. The court, by training as well as through the information it gains at the hearing, is in a superior position to assess the merits of the action.” *Settlement and Dismissal of Stockholders’ Actions*, 23 Sw. L.J. at 799; *see also Zapata*, 430 A.2d at 789 n.18.

On a related note, the state derivative plaintiffs appear to suggest a rule that would insufficiently protect the investing public when a derivative suit is settled. Like their federal colleagues, the state derivative plaintiffs recognize that the proposed settlement here “should be reviewed by the United States District Court and the Hennepin County District Court under the standards applicable to settlements of derivative actions pursuant to Fed. R. Civ. P. 23.1 and Minn. R. Civ. P. 23.09.” State Deriv. Plaintiffs’ Brief at 7. “Thus,” the state derivative plaintiffs acknowledge, “under both Minnesota and federal law, in evaluating the settlement of a derivative action, whether or not a special litigation committee has recommended the settlement, a court is required to make a determination that the settlement is fair, reasonable and adequate.” *Id.* at 13. Toward the end of their brief, however, the state derivative plaintiffs water down this test. They assert that “courts should neither scrutinize the merits, nor substitute their own judgment for that of the committee, but should limit their review to ‘gross approximations’ to assure ‘rough justice.’” *Id.* at 30-31.

In response, the PSLRA plaintiffs respectfully suggest that the answer this Court gives the United States District Court should not send mixed signals. “Rough justice” does not adequately safeguard the interests of the many Minnesotans who invest in public companies through employee retirement plans and other means. The more deferential standard that the

state derivative plaintiffs seem to propose takes no heed of the ongoing problem of abuse of power in corporate boardrooms. The “daily dose of scandal,” *Small v. Fritz Cos.*, 65 P.3d 1255, 1263 (Cal. 2003), that has dominated the business headlines in recent years dictates robust court review. Anything less would abrogate the trial judge’s venerable fiduciary role when a representative action, often affecting the rights of many citizens not before the court, is presented for judicial approval.⁶

III. CONCLUSION

For the reasons given here and in their opening brief, the PSLRA plaintiffs respectfully suggest that the certified question be answered as follows. To protect the corporation and its stockholders who will be bound by the settlement and accompanying releases, a trial court must scrutinize a proposed settlement in a shareholder derivative action to ascertain whether the settlement is fair, reasonable and adequate. The court may consider

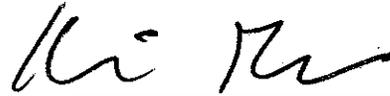
⁶ One further point requires clarification. In describing the procedural background, the federal derivative plaintiffs write: “The SLC also considered claims that were asserted by CalPERS, the court-appointed lead plaintiff in the UnitedHealth PSLRA Litigation.” Fed. Deriv. Plaintiffs’ Brief at 11. Read literally, however, this statement is inaccurate. The SLC Report actually emphasized that “[t]he SLC expresses no opinion as to the class action securities claims asserted in various lawsuits” now consolidated before the United States District Court. A242 n.5.

the SLC's support for the proposed compromise as one factor in its judicial review, but the SLC's opinion is not, and cannot be, dispositive.

DATED: March 31, 2008

Respectfully submitted,

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
DARREN J. ROBBINS
MICHAEL J. DOWD (*Pro Hac Vice*)
ARTHUR C. LEAHY
ANDREW J. BROWN (*Pro Hac Vice*)
KEVIN K. GREEN (*Pro Hac Vice*)
ANNE L. BOX
RAMZI ABADOU



KEVIN K. GREEN

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

REINHARDT, WENDORF & BLANCHFIELD
GARRETT D. BLANCHFIELD, JR. (#209855)
E-1250 First National Bank Building
332 Minnesota Street
St. Paul, MN 55101
Telephone: 651/287-2100
651/287-2103 (fax)

Attorneys for PSLRA Plaintiffs California Public
Employees' Retirement System and Alaska
Plumbing and Pipefitting Industry Pension Trust

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing **RESPONDING BRIEF OF PSLRA PLAINTIFFS CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND ALASKA PLUMBING AND PIPEFITTING INDUSTRY PENSION TRUST** complies with the word count limitations of Minn. R. Civ. App. P. 132.01, subd. 3(a) for a brief produced with a proportional font. The length of this brief is 6,031 words. This brief was prepared using Microsoft Word 2002.

DATED: March 31, 2008



KEVIN K. GREEN

UNITEDHEALTH SEC 06 (MN SUP)
Service List (060131-00001)

COUNSEL FOR PSLRA DEFENDANTS:

Richard G. Mark
BRIGGS & MORGAN, P.A.
80 South Eighth Street, Suite 2200
Minneapolis, MN 55402
612/977-8400
612/977-8650 (Fax)

David L. Hashmall
FELBER LARSON FENLON & VOGT
220 South Sixth Street, Suite 2200
US Bank Plaza
Minneapolis, MN 55402-4504
612/339-6321
612/338-0535 (Fax)

Seth L. Levine
FOLEY & LARDNER LLP
90 Park Avenue
New York, NY 10016
212/682-7474
212/687-2329 (Fax)

Peter W. Carter
Katie C. Pfeifer
Michelle S. Grant
DORSEY & WHITNEY, LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498
612/340-2600
612/340-2868 (Fax)

Steve W. Gaskins
Jodi F. Colton
FLYNN, GASKINS & BENNETT, LLP
333 South Seventh Street
Suite 2900
Minneapolis, MN 55402
612/333-9500
612/333-9579 (Fax)

Michael P. Matthews
FOLEY & LARDNER LLP
Firststar Center
777 East Wisconsin Avenue
Milwaukee, WI 53202-5367
414/271-2400
414/297-4900 (Fax)

David M. Brodsky
Alexandra A.E. Shapiro
Blair G. Connelly
LATHAM & WATKINS LLP
885 Third Avenue, Suite 1000
New York, NY 10022-4802
212/906-1200
212/751-4864 (Fax)

Charles E. Bachman
Abby Rudzin
Adam Rubin
O'MELVENY & MYERS LLP
7 Times Square
New York, NY 10036
212/326-2000
212/326-2061 (Fax)

Jeffrey W. Kilduff
Brian D. Boyle
O'MELVENY & MYERS LLP
1625 Eye Street, NW
Washington, DC 20006-4001
202/383-5300
202/383-5414 (Fax)

Andrew S. Hansen
OPPENHEIMER WOLFF & DONNELLY LLP
Plaza VII, Suite 3300
45 South Seventh Street
Minneapolis, MN 55402
612/607-7000
612/607-7100 (Fax)

UNITEDHEALTH SEC 06 (MN SUP)
Service List (060131-00001)

Grant J. Esposito
MORRISON & FOERSTER LLP
1290 Avenue of the Americas
New York, NY 10104-0050
212/468-8000
212/468-7900 (Fax)

COUNSEL FOR FEDERAL DERIVATIVE DEFENDANTS:

Gretchen A. Agee
Katie C. Pfeifer
Peter W. Carter
DORSEY & WHITNEY, LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498
612/340-2600
612/340-2868 (Fax)

Barbara P. Berens
KELLY & BERENS, PA
80 South Eighth Street, Suite 3720
Minneapolis, MN 55402
612/349-6171
612/349-6416 (Fax)

Steve W. Gaskins
FLYNN GASKINS & BENNETT, LLP
333 South Seventh Street
Suite 2900
Minneapolis, MN 55402
612/333-9503
612/333-9579 (Fax)

Andrew S. Hansen
Heidi A.O. Fisher
Michael J. Bleck
OPPENHEIMER WOLFF & DONNELLY LLP
Plaza VII, Suite 3300
45 South Seventh Street
Minneapolis, MN 55402
612/607-7000
612/607-7100 (Fax)

Alexandra A.E. Shapiro
Blair Connelly
David M. Brodsky
LATHAM & WATKINS LLP
885 Third Avenue, Suite 1000
New York, NY 10022-4802
212/906-1200
212/751-4864 (Fax)

COUNSEL FOR PSLRA PLAINTIFFS:

Michael J. Dowd
Kevin K. Green
Andrew J. Brown
COUGHLIN STOIA GELLER RUDMAN
& ROBBINS LLP
655 West Broadway, Suite 1900
San Diego, CA 92101
619/231-1058
619/231-7423 (Fax)

Garrett D. Blanchfield, Jr.
REINHARDT WENDORF & BLANCHFIELD
E-1250 First National Bank Building
332 Minnesota Street
St. Paul, MN 55101
651/287-2100
651/287-2103 (Fax)

UNITEDHEALTH SEC 06 (MN SUP)
Service List (060131-00001)

COUNSEL FOR FEDERAL DERIVATIVE PLAINTIFFS:

Jack L. Chestnut
Karl L. Cambronne
Jeffrey D. Bores
CHESTNUT & CAMBRONNE, P.A.
3700 Campbell Mithun Tower
222 South Ninth Street
Minneapolis, MN 55402
612/339-7300
612/336-2940 (Fax)

Gerald H. Silk
Adam Wierzbowski
Beata Gocyk-Farber
BERNSTEIN LITOWITZ BERGER &
GROSSMAN LLP
1285 Avenue of the Americas
38th Floor
New York, NY 10019
212/554-1400
212/554-1444 (Fax)

Jay W. Eisenhofer
Michael D. Barry
Sidney S. Liebesman
GRANT & EISENHOFER, P.A.
1201 North Market Street
Wilmington, DE 19801
302/622-7000
302/622-7100 (Fax)

Thomas G. Shapiro
Edward F. Haber
Michelle H. Blauner
SHAPIRO HABER & URMY, LLP
53 State Street
Boston, MA 02109
617/439-3939
617/439-0134 (Fax)

James R. Behrenbrinker
SCHAEFER LAW FIRM, LLC
220 South Sixth Street, Suite 1700
Minneapolis, MN 55401-4511
612/341-1213
612/436-9019 (Fax)

Brian F. Rice
James P. Michaels
Ann E. Walther
RICE, MICHAELS & WALTHER LLP
206 East Bridge-Riverplace
10 Second Street, NE
Minneapolis, MN 55413
612/676-2300
612/676-2319 (Fax)

COUNSEL FOR STATE DERIVATIVE PLAINTIFFS/INTERVENORS:

Vernon J. Vander Weide
HEAD SEIFERT & VANDER WEIDE, P.A.
333 South Seventh Street,
Suite 1140
Minneapolis, MN 55402-2422
612/339-1601
612/339-3372 (Fax)

Nadeem Faruqi
Shane Rowley
FARUQI & FARUQI, LLP
369 Lexington Avenue, 10th Floor
New York, NY 10017-6531
212/983-9330
212/983-9331 (Fax)

UNITEDHEALTH SEC 06 (MN SUP)
Service List (060131-00001)

Mark C. Gardy
James S. Notis
GARDY & NOTIS, LLP
440 Sylvan Avenue, Suite 110
Englewood Cliffs, NJ 07632
201/567-7377
201/567-7337 (Fax)

COUNSEL FOR AMICUS CURIAE STATE OF MINNESOTA:

Lori Swanson
Attorney General
Jeffrey J. Harrington
Assistant Attorney General
Office of the Attorney General
State of Minnesota
445 Minnesota Street, Suite 1400
St. Paul, MN 55101-2131
651/297-2730
651/297-7206 (Fax)