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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FERN LERNER, On Behalf Of All Others Similarly
Situated,

Plaintiff,

vs.

AETNA, INC., WILLIAM H. DONALDSON, and
JOHN W. ROWE, M.D.,

Defendants.

Index No.

**CLASS ACTION COMPLAINT
FOR VIOLATIONS OF THE
FEDERAL SECURITIES LAWS**

JURY TRIAL DEMANDED

Plaintiff complains¹ of defendants as follows:

SUMMARY OF ALLEGATIONS

1. In order to spin-off Aetna U.S. Healthcare, Inc. ("New Aetna" or the "Company"), a then wholly owned subsidiary of Aetna, Inc. ("Old Aetna"), a Connecticut incorporated financial services company, to its public shareholders, defendants filed a registration statement with amendments

¹ Plaintiff's allegations pertaining to plaintiff and her counsel are made on knowledge. All other allegations are made upon information (including that derived from analysis of documents filed with the Securities and Exchange Commission, press releases, statements of securities analysts, news reports, and the investigation conducted by and through plaintiff's counsel) and belief.

(the "Registration Statement") with the Securities and Exchange Commission (the "SEC"). Thereafter, on December 13, 2000, Old Aetna shareholders received a share of New Aetna for each share of Old Aetna (along with cash.). This spin-off and stock issuance (the "Spin-off and Stock Issuance") was for approximately 142 million shares of stock of Aetna U.S. Healthcare, Inc. which would thereafter be renamed Aetna, Inc. (a Pennsylvania corporation.)

2. From late 2000 and thereafter, a critical consideration for prospective investors in Old Aetna (and later New Aetna) shares was the efficient market's assessment of, among other things, the ability of New Aetna to control and monitor its costs and obligations in light of the Company's expected and actual sales. During the Class period and before, that assessment was based upon New Aetna's management tools, systems, procedures and general management capacity to know and hold down its costs in the highly competitive health insurance market in which Aetna was operating. See ¶¶21-23 *infra*.

3. Defendants knew that such management systems, procedures and controls for monitoring such costs were lacking but they made positive statements about Aetna's management, controls, and to control costs while concealing the defective systems. See ¶¶26-29 *infra*. These omissions rendered misleading the statements made in the Registration Statement and other disclosure documents. See ¶¶32-35 *infra*.

4. Between April 10, 2001 and May 8, 2001, New Aetna shocked the efficient market for its common stock when it disclosed earnings well below expectations due to higher-than-anticipated medical costs during the fourth quarter of 2000 and the first quarter of 2001. The Company also disclosed that these disappointing results were the result of embarrassingly faulty record-keeping which

caused the payment of millions of dollars in medical claims for former clients, and the woeful absence of minimal management control systems required to let management know what Aetna's obligations and proper medical costs were.

5. The value of New Aetna shares had been artificially inflated to almost \$43.00 per share but, as a result of these disclosures, New Aetna's stock price plunged in excess of forty percent.

6. Defendants' untrue and misleading statements were made when they had actual knowledge that Aetna had inadequate systems in place; but, they did not disclose that fact at the times that they were making unwarranted and misleading statements about New Aetna's systems, cost controls, increased efficiency and expert management. Moreover, throughout the Class Period, the individual defendants had personal motives to misrepresent New Aetna.

7. In direct consequence of defendants' false and misleading Registration Statement, other false disclosures and the legal violations alleged herein, plaintiff and other members of the proposed class, (see ¶15) acquired New Aetna shares and suffered damages.

JURISDICTION AND VENUE

8. The claims asserted herein arise under and pursuant to Sections 10 (b) and 20 (a) of the Securities Exchange Act of 1934 (the "Exchange Act") , 15 U. S.C. §§ 78j (b) , and 78t (a) and Rule 10b-5 promulgated thereunder by the SEC, 17 C.F.R. § 240.10b-5.

9. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 & 1337, and Section 27 of the Exchange Act, 15 U.S.C. § 78aa.

10. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C. § 1391(b). Defendant New Aetna, the issuer, conducts business in this District; and the acts

complained of (including the trading of the stock based upon misleading information, and the preparation, issuance and dissemination of the materially false and misleading information to the investing public) occurred in substantial part in this District.

11. In connection with the acts alleged in this Complaint, defendants, directly or indirectly, used the mails and the means and instrumentalities of interstate commerce, including telephonic communications.

PARTIES

12. (a) Plaintiff purchased shares of New Aetna stock on as set forth in the attached certification and has been damaged thereby.

(b) Plaintiff and class members relied or are deemed to have relied on market prices and on the Individual Defendants to prepare a truthful and complete Registration Statement.

13. (a) New Aetna is incorporated under the laws of Pennsylvania and maintains its executive offices at 151 Farmington Avenue, Hartford Connecticut. New Aetna claims to be the nation's largest health care benefits company, with approximately 19.2 million health members, 14.5 million dental members and 11.4 million group life and disability insurance members at September 30, 2000. New Aetna asserts that it provides a full spectrum of health and dental products, group insurance products and certain specialty health products. New Aetna does business in all 50 states, and focuses on the commercial customer (ranging from small employer groups to large, multi-site national accounts). New Aetna also has a large case pensions business that manages a variety of retirement products for qualified defined benefit and defined contribution plans of large customers.

(b) New Aetna was incorporated in December 1982, as United States Health Care Systems, Inc. It changed its name to U.S. Healthcare, Inc. in April 1986. It was acquired by Old Aetna in July 1996, and changed its name to Aetna U.S. Healthcare Inc. in March 1997. In December 2000, it changed its name to Aetna, Inc.

(c) Pursuant to the Registration Statement, New Aetna, for value, issued 141.4 million shares of New Aetna stock. Immediately after the Spin-off and Stock Issuance, New Aetna estimated that there were about 16,200 shareholders of record. New Aetna shares trade on the New York Stock Exchange under the symbol "AET". As of March 31, 2001, there were 142.5 million shares of New Aetna common stock outstanding.

14. Each of the individual defendants (the "Individual Defendants") served, at all times relevant to the claims set forth herein, as a director and/or as a senior executive officer of New Aetna. Defendant William H. Donaldson ("Donaldson") is a member of the Board of Directors of New Aetna and former CEO of Old Aetna. Defendant John W. Rowe, M.D. ("Rowe") is President and Chief Executive Officer of New Aetna.

CLASS ACTION ALLEGATIONS

15. (a) Plaintiff brings this action as a class action pursuant to Rules 23 (a) and (b) (3) of the Federal Rules of Civil Procedure, on behalf of herself and a class (the "Class") of all persons who purchased New Aetna shares during the period December 13, 2000 to June 7, 2001 or who purchased shares of Old Aetna during the period December 1, 2000 which were converted to New Aetna shares pursuant to the Spin-off and Stock Issuance (and the Registration Statement issued in

connection therewith) on December 13, 2000. Plaintiff reserves the right to amend or supplement the definition of the Class in connection with the motion made pursuant to Rule 23 or other proceedings.

(b) Excluded from the Class are defendants herein; members of the immediate family of each of the Individual Defendants; the directors, officers, affiliates, subsidiaries and parents of defendant New Aetna, as well as all of its subsidiaries and operating affiliates; any person or entity in which any excluded person has a controlling interest; and the legal representatives, agents, heirs, successors-in-interest or assigns of any excluded person.

16. The members of the Class are geographically dispersed and so numerous that joinder of all members is impracticable. New Aetna issued approximately 142 million New Aetna shares to members of the investing public pursuant to the Spin-off and Stock Issuance. New Aetna asserts that it has at least 16,000 shareholders. The precise number of Class members is unknown to plaintiff at this time but Class members are believed to number in the thousands.

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

(a) Whether the Registration Statement disseminated to the investing public in connection with the issuance of the New Aetna shares and other disclosure documents contained untrue or misleading statements of material fact;

(b) Whether the federal securities laws were violated by defendants' acts as alleged herein; and

(c) The extent of injuries sustained by members of the class and the appropriate measure of damages.

18. Plaintiff's claims are typical of the claims of the other members of the Class. The damages suffered by plaintiff and all other Class members arise from and were caused by the same violations and course of conduct. Plaintiff does not have interests antagonistic to, or in conflict with, the Class.

19. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff has retained competent counsel experienced in class action litigation under the federal securities laws to further ensure such protection and intends to prosecute this action vigorously.

20. (a) A class action is superior to other available methods (if any) for the fair and efficient adjudication of this controversy. Since the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for individual Class members to seek redress for the wrongful conduct alleged. Plaintiff knows of no difficulty which will be encountered in the management of this litigation that would preclude its maintenance as a class action.

(b) The names and addresses of the record purchasers of New Aetna shares pursuant to the Spin-off and Stock Issuance are available from New Aetna or its agents who distributed New Aetna shares through the Spin-off and Stock Issuance. Notice can be provided to Class members via a combination of published notice and first-class mail using techniques and forms of notice similar to those customarily used in class actions arising under the federal securities laws.

UNDERLYING ALLEGATIONS

A. Defendants Knew That A Critical Issue For Prospective Investors After The Spinoff and Stock Issuance Was Aetna's Ability to Control and Monitor Costs and Obligations

21. On May 31, 2000, Old Aetna announced that it was in discussions with ING Group ("ING") for the sale of all or part of Old Aetna's financial services and international businesses.

22. Throughout the period between the announcement of ING transaction and the Spin-off and Stock Issuance, one of the critical issues for investors was New Aetna's ability to control and monitor its costs and obligations. New Aetna operates in a highly competitive market and, therefore, the ability to know, monitor, control and reduce costs were critical.

23. Later, after the issuance of the New Aetna shares in the Spin-off and Stock Issuance on December 13, 2000, the critical issue for investors remained New Aetna's ability to control and monitor its costs and obligations.

B. Defendants Made False Positive Statements About New Aetna's Business Prospects

24. (a) On July 20, 2000, Old Aetna announced a definitive agreement to sell Aetna Financial Services and Aetna International to ING. The transaction was targeted to close by the end of 2000. Under the terms of the agreement, each Old Aetna share would be swapped for one share in New Aetna and approximately \$35 per share in cash. Defendant Donaldson reported that New Aetna "should be able to bring intensified management focus on improved service to our customers and enhanced financial performance." [Emphasis added.]

(b) On September 5, 2000, Old Aetna announced the appointment of John W. Rowe, M.D. as President and Chief Executive Officer of Aetna U.S. Healthcare Inc. and as a member of the

boards of directors of Aetna U.S. Healthcare Inc. and Old Aetna. Upon completion of the Spin-off and Stock Issuance, defendant Rowe would become President and Chief Executive Officer with defendant Donaldson serving as Chairman of New Aetna. Defendant Donaldson admirably remarked that "Rowe is an outstanding choice to help Aetna accomplish its strategic goal of improving its financial performance by remaking its business model ... He has shown an ability to ... manage costs and meet financial objectives. . ." [Emphasis added.] Defendant Rowe, for his part, said that "I will be intensely focused on improving Aetna's financial performance

(c) On November 1, 2000, Old Aetna reported third quarter 2000 operating earnings of \$158.1 million, or \$1.10 per common share. Defendant Donaldson said that "we are making considerable progress on a number of actions designed to increase our overall financial performance. [W]e are continuing to ... shift medical management resources to a more regional structure to enhance our ability to control medical costs." [Emphasis added.]

(d) On December 1, 2000, two weeks before the Spin-off and Stock Issuance, New Aetna filed with the SEC its final, amended Registration Statement. In the December 1, 2000 Registration Statement, New Aetna stated that:

We have already implemented a number of strategic and operational initiatives ..., addressing rising medical costs and improving the efficiency of our operations.

* * *

Further Strengthening Management. ... We have also taken steps to better empower local, regional management, to address more quickly and effectively medical cost ...

Registration Statement at pp. 10-11. [Emphasis added.]

25. New Aetna shares initially traded in the range of \$33.50 to \$36.815 per share during its first week of trading, December 14-20, 2000. Two weeks later, on January 3, New Aetna shares traded at a high of \$42.6875.

C. By The Spin-off And Stock Issuance On December 13, 2000, At The Latest, Defendants Knew Of Numerous Material, Negative And Embarrassing Facts About New Aetna's Poor Financial And Membership Record Keeping

26. On September 5, 2000, November 1, 2000 and December 1, 2000, the Individual Defendants authorized or announced several initiatives addressing managing costs and/or increasing efficiency. To implement these initiatives, New Aetna started to "change" the "senior management team." These steps were taken to address known but concealed negative, material and embarrassing facts about New Aetna's business which disproved or undercut defendants' positive statements alleged a Paragraphs 24(a)-(d). Specifically, prior to the Spin-off and Stock Issuance, the truth was that New Aetna's core health care benefits business had been experiencing difficulty with tracking its membership and payment for medical claims. This resulted in past and on-going material overpayment of claims by New Aetna. This material fact, although known to defendants, was not disclosed.

27. Because of the overpayments, New Aetna could not properly follow New Aetna's explicit procedures for reserve creation. In the audited financial statements accompanying the Registration Statement, the New Aetna's accountants observed:

Unpaid health care claims include estimates of payments to be made on claims reported but not yet paid and health care services rendered but not yet reported to New Aetna as of the balance sheet date. ... Such estimates are developed using actuarial principles and assumptions which consider, among other things, contractual

requirements, historical utilization trends and payment patterns, medical inflation, product mix, seasonality and other relevant factors. ...

Unpaid claims consist primarily of reserves ... Such reserves are based upon the present value of future benefits which is based on assumed investment yields and assumptions regarding mortality, morbidity and recoveries from government programs.

* * *

The methods used in developing the above estimates and establishing the related liabilities are continually reviewed with any necessary adjustments reflected during the current period in results of operations.

Registration Statement at p. F-38. [Emphasis added.]

28. These explicit accounting provisions were not followed since bookkeeping errors caused overpayment of claims. The truth was that material overpayments were being made by New Aetna to its customers who were not eligible for such monies. These facts, although known to defendants, were not disclosed.

29. The foregoing negative facts about New Aetna's business were highly material and increased the need for defendants to fully disclose New Aetna's actual procedures and ability to control and monitor its costs and obligations in light of the Company's expected and actual sales. See ¶ 34 infra.

D. In Violation of Section 10(b) Of The Exchange Act, The Defendants Failed To Disclose The Negative Facts Which Omission Rendered False And Misleading The Statements Made In The Registration Statement

30. Defendants' failure to disclose in the Registration Statement the critical facts alleged in Paragraphs 21-29 above rendered untrue or misleading various statements made to investors.

For example:

(a) Defendants described the ongoing success of its health care benefits business in the Registration Statement. This statement was false and misleading in light of the material fact, only partially revealed in June 2001, that New Aetna had substantial problems with its record keeping which, to correct, required significant time, management focus and financial outlays.

(b) Defendants described New Aetna as putting together a superb management team in the Registration Statement. This statement was false and misleading in light of the material facts that New Aetna replaced its CFO immediately after partially revealing first quarter results and the inability of management to recognize, reveal and recommend resolution of the bookkeeping problem prior to June 2001.

(c) Defendants represented that New Aetna enjoyed an advantage over its competitors due to New Aetna's "excellent market position, products and services." Later, the Company would say that "our competitive strengths [are] broad geographic reach, strong market positions, large membership base, extensive provider networks, extensive product offerings, information technology expertise, a dedicated corps of employees and the quality and recognizability of our Aetna brand ... " Registration Statement at P.9. This statement was rendered misleading by defendants' omission to disclose the negative facts about New Aetna's business alleged in Paragraphs 21-29 above.

31. In addition, the statements as a whole in the Registration Statement were rendered misleading and untrue by the material facts alleged in Paragraphs 26-30, *supra* and Paragraph 32, *infra*. New Aetna has not issued corrective disclosures although it has issued numerous press releases and SEC filings since first being informed of the falsity of its prior disclosures.

E. New Aetna Persisted In Making Favorable and Incomplete Material Statements After the Spin-off and Stock Issuance

32. Following the Spin-off and Stock Issuance, New Aetna made a series of statements through June 2001 which divulged some accurate information while maintaining the false veneer of the Registration Statement.

(a) On December 18, 2000, New Aetna announced a series of actions including purported "improvements in the efficiency of claim and member services processes ..." [Emphasis added.] This statement was false and misleading in light of the material fact which was not disclosed in that "improvements in the efficiency of claim" processing were non-existent.

(b) On January 30, 2001, New Aetna reported its fourth quarter 2000 operating earnings from continuing operations of \$28.7 million, or \$0.20 per common share. This earnings report was subsequently filed with the SEC on a form 8-K dated February 14, 2001. Defendant Rowe advised that "[w]e are proceeding with plans to ... improve the efficiency of claim and member service processes." [Emphasis added.] This statement was false and misleading in light of the material fact which was not disclosed in that improvements in the "efficiency of claim" processing were nonexistent.

(c) On March 15, 2001, New Aetna filed with the SEC a Form 8-K and issued a press release announcing that Defendant Donaldson would step down as Chairman and Defendant

Rowe would become Chairman on April 1, 2001. Donaldson would remain a member of the Board of Directors. Donaldson is quoted as saying, "[w]e have charted a course for change..." Defendant Rowe would praise Defendant Donaldson saying that he "work[ed] to improve the effectiveness of claim and medical cost management." [Emphasis added.] The first statement was false and misleading in light of the material fact that New Aetna's "course" was fraught with undisclosed financial pitfalls; and, the second statement was false and misleading in light of the material fact which was not disclosed that New Aetna was ineffective in "claim and medical cost management."

33. However, on April 10, 2001, New Aetna issued a press release and filed with the SEC a Form 8-K announcing that it expected higher-than-anticipated medical costs with results expected to be significantly lower than analysts' estimates. Additionally, "the commercial HMO risk medical cost trend for services rendered in the first quarter is running considerably higher than previously projected." [Emphasis added.] This assertion was false and misleading in light of the unqualified material statements in the Registration Statement and the unrevealed fact that New Aetna had substantial problems with its record keeping which, to correct, required significant time, management focus and financial outlays. See ¶¶30-31, *supra*.

(a) On April 13, 2001, Associated Press revealed that Alan J. Weber was resigning as New Aetna's chief financial officer. He was succeeded by Alan Bennett, corporate controller, as interim chief financial officer. New Aetna's spokesman said that Weber "decided he's better suited for other opportunities outside the health care industry." But, no specific successor employment was announced. New Aetna's insisted that "Weber's departure had nothing to do with the recent troubles."

(b) On April 9, 2001, New Aetna shares closed at \$36.15 per share. On April 10, 2001, New Aetna shares dropped to \$29.80. It would close the week at \$27.00 per share on April 12, 2001.

(c) On May 10, 2001, New Aetna filed with the SEC its Form 10-Q for the first quarter 2001. This document announced an operating loss, excluding another item, of \$36.6 million, or \$0.26 per share. On the same day, Aetna issued a press release which extensively quoted Defendant Rowe. He said:

(i) "We are disappointed with these results, which were caused by higher-than-expected medical costs related primarily to the fourth quarter of 2000 and the first quarter of 2001." [Emphasis added.] This statement was false and misleading in light of the material fact that this information had not been disclosed at the fourth quarter.

(ii) "The recent increases in our medical cost trend result primarily from higher utilization, driven by outpatient services, pharmacy and specialist services, although higher unit costs also contributed." [Emphasis added.] This statement was false and misleading in light of a material fact which was not disclosed that a contributing cause was paying millions of dollars for claims by former policyholders.

(iii) "We do have important strengths ... including a significant market position, an experienced and professional work force ... and a new management team of seasoned leaders.[Emphasis added.] This statement was false and misleading in light of the material fact which was not disclosed in the Registration Statement that the "seasoned" "management team" had not been able to promptly respond to the improper payment of millions of dollars for claims by improper billing.

(d) On May 10, 2001, New Aetna shares closed at \$25.63 per share. By May 17, 2001, New Aetna shares had dropped to \$24.68 per share, a relatively inconsequential amount. However, the analysts were not assured. On May 11, 2001, Merrill Lynch's stock analyst downgraded New Aetna's rating. The following week, on May 17, 2001, New Aetna's rating was downgraded by Prudential.

(e) A June 7, 2001 article, carried on the Dow Jones Newswires entitled "Aetna Says It Has Overpaid Millions For Lapsed Policies," finally revealed the cause of much of New Aetna's financial woes - "[p]oor record-keeping has resulted in ... paying millions of dollars in medical claims for people whose benefits have expired." The source of this revelation was Defendant Rowe in remarks at an investor conference sponsored by New Aetna's largest shareholder Sanford C. Bernstein & Co. (The 17th Annual Strategic Decisions conference held on June 7, 2001). A company spokesman added that New Aetna "sometimes pays for customers whose coverage has lapsed and occasionally pays other claims twice." This tardy disclosure of "record-keeping problems" was cited as "an example of the many improvements Aetna needs to make to reverse its troubled fortunes." However, it also is an example of the negative disclosures that New Aetna should have informed the public when the shares of New Aetna were issued.

(f) On June 8, 2001, The New York Times reported that because of its poor record-keeping, New Aetna has paid millions of dollars in medical claims for people with expired benefits. Defendant Rowe said a new system might be in place in 40 days. Furthermore, the Company was struggling to control medical costs as it relaxes some medical care restrictions. There would never be a report that the corrections were ever implemented.

(g) On the next trading day, June 11, 2001, New Aetna shares closed at \$25.81 per share.

34. After the end of the Class Period more details of New Aetna's problems were exposed to the public.

(a) On June 20, 2001, the Dow Jones Newswires carried an article entitled "Tales of the Tape: Analysts' Affections For HMOs Fade." As reported, the fallout from New Aetna's belated disclosures took its toll on stock analyst picks. Prudential Securities, Inc. analyst David Shove downgraded New Aetna to hold from strong buy. J.P. Morgan analyst Lori Price observed that for New Aetna "we expected the cost trends to be higher than the general (pessimistic) thinking" for the managed-care sector.

(b) In a June 28, 2001 article entitled "Aetna Cautious On Recovery", Ron Williams, Aetna's new Chief of Health Operations, explained that the Company had numerous problems demanding to be tackled and that "Aetna needs to do 200 different activities better every day."

(c) In a June 29, 2001 news report carried by Reuters, it was reported that defendant Rowe had told the Financial Times that New Aetna "will take almost another year to recover." [Emphasis added.]

(d) On July 5, 2001, in an article carried by Reuters, it was reported that New "Aetna ... is trying to stem 'financial leakage' resulting from rising health care costs and underpriced insurance plans that led to a loss last quarter." An analyst explained that "They took their eye off the ball." Another analyst would state that New Aetna was "a textbook case of the problems that can

happen with a health plan." New Aetna's spokesman admitted that the Company still was "in the process of finding and discovering where the financial leakage is coming from."

35. Notwithstanding the positive statements of the defendants and the partial disclosures of the negative information as alleged in Paragraphs 26-33 supra, the value of New Aetna shares had been artificially inflated to almost \$43.00 per share in early January 2001. As the false information slowly seeped out the per share price of Aetna stock would plunge below \$25.00 per share -- a decrease in excess of forty percent over the Class Period.

ADDITIONAL ALLEGATIONS OF SCIENTER

36. In addition to the allegations of actual knowledge and/or reckless disregard set forth above, each of the Individual Defendants had the opportunity to commit fraud and was highly motivated to participate in the scheme.

37. Old Aetna had a history of difficulty in the presenting its financial results in a manner acceptable to the SEC. In February 2000, Old Aetna agreed to amend previously issued financial statements and related disclosures for 1998 and three quarters of 1999. The restatements primarily relate to the classification and timing of amounts earned by Old Aetna following the sale of a subsidiary.

38. In February 2000, Old Aetna issued a press release, announcing that it had relieved its CEO of his duties and appointed a new CEO, defendant Donaldson. Donaldson was one of the founding partners of Donaldson, Lufkin & Jenrette Securities Corporation. His mandate was to maximize Old Aetna's share value. He was motivated to demonstrate his earlier renown as an investment banker by achieving the ING transaction and the Spin-off and Stock Issuance. With the problems at Old Aetna, it was necessary to hire Defendant Rowe to run Aetna U.S. Healthcare Inc.

(later, New Aetna) and issue materially false disclosures regarding Aetna U.S. Healthcare Inc. and New Aetna in SEC filings and press releases.

39. During the 2000 time period, prior to the Spin-off and Stock Issuance, Defendants Donaldson and Rowe received extraordinary financial incentives to assure the finalization of the ING transaction and the acquiescence of the Old Aetna shareholders to the Spin-off and Stock Issuance. As described above, the pre-Class Period material false and misleading disclosures had the desired affect on the market price of New Aetna shares once it started trading. It also assured that Defendants Donaldson and Rowe justified their extraordinary remuneration.

- Donaldson, for 2000, received a salary of \$1,000,000 and a bonus of \$6,000,000. Also in 2000, he received a stock option grant of 500,000 Aetna common shares and a grant of 100,000 shares of restricted Aetna common stock which vested upon the completion of the ING transaction and the Spin-off and Stock Issuance.
- Rowe's employment agreement called for an annual salary of not less than \$1,000,000 and a target annual bonus of at least \$1,500,000. For the last three months in 2000, Rowe received salary and bonus of \$648,077. Rowe received a sign on bonus of \$2,000,000 and, on July 3, 2001, he received a retention bonus of \$1,400,000. Rowe was granted 25,000 Aetna restricted stock units and stock options on 500,000 shares of Aetna common stock. He was entitled to additional and supplemental grant if the ING transaction and the Spin-off and Stock Issuance were completed. In toto, by April 27, 2001, Rowe held options n 1,246,464 shares on New Aetna common. Rowe is entitled to a minimum annual pension of \$300,000 and generous termination benefits.

40. In Class Action Complaints filed in late 1997, plaintiffs alleged that certain Old Aetna officers and directors were liable for misrepresentations and omissions regarding, among other things, the merger of Old Aetna with U.S. Healthcare Inc. and the accounting of medical claim reserves. On January 4, 2001, the Court gave final approval to a settlement requiring the payment of approximately \$83 million. The allegations of this complaint asserted that certain officers and/or directors had misrepresented the merger integration of Old Aetna with U.S. Healthcare Inc., and OldAetna had overstated medical claim reserves. Strikingly, the integration problems were associated with the incompatibility of computer systems. Because of this problem Old Aetna had great difficulty in adapting contract analysis, claims adjudication and reimbursement features. The outcome was that thousands of claims were lost, claim forms were not processed and a huge backlog of valid claims went unpaid. Because unpaid claims were never recorded onto Old Aetna's books and records, reserves, which were calculated as a percent of the incorrect claim demand, were understated. This provided additional demonstration of knowledge by Defendants Donaldson and Rowe. Defendant Donaldson, who joined the Board in 1996, had knowledge of these negative facts pertaining to the earlier class action when he was actively touting the Company. Rather than assure that the same problems did not arise, he ignored the indicia of difficulties in paying claims and misrepresented Aetna as a solid investment. Similarly, Defendant Rowe was necessarily involved in authorizing the \$83 million settlement which would have necessitated being informed as to the alleged misdeeds. He could not have helped recognizing the parallel problems at New Aetna. Yet, he chose to ignore them.

41. During the Class Period, Defendants Donaldson and Rowe conditioned the market for New Aetna securities by, among other things, providing interviews to the financial press and attending

analyst meetings where they would extol the virtues of New Aetna and its securities. By doing so, they were able to drive the value of New Aetna stock upward with the increased interest in the Company. However, from no later than the beginning of the Class Period, they knew, from internal periodic reports, that New Aetna's financial and operational well-being was not as good as they presented it to be.

42. Defendants Donaldson and Rowe were motivated to engage in the fraudulent practices alleged herein in order to, among other things, assure that they would receive the acquiescence of shareholders to the ING transaction and the Spin-off and Stock Issuance.

43. Defendants Donaldson and Rowe had knowledge of preliminary information regarding New Aetna's financial and operational weaknesses as they contrived to complete the ING transaction and the Spin-off and Stock Issuance. They were motivated to engage in the fraudulent practices alleged herein in order to, among other things, assure receipt of their bonuses tied ING transaction and the Spin-off and Stock Issuance, maximize their proceeds from their respective employment contracts and insure their earlier contrivances were not discovered. Thus, they were incentivized to present Aetna as a viable company.

44. As alleged in this Complaint, defendants acted with scienter in that each knew that the public documents and statements issued or disseminated in New Aetna's name were materially false and misleading; each knew that these statements or documents would be issued or disseminated to the investing public; and each knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As stated throughout this Complaint, in particular, paragraphs 21 through 31 above, defendants, because

of their receipt of information disclosing and confirming the true facts concerning New Aetna and its true financial condition, their control over, and/or receipt, and/or modification or editing of New Aetna's allegedly materially misleading misstatements and/or their associations with New Aetna making them privy to confidential proprietary information of and concerning New Aetna, participated in the fraudulent scheme alleged herein, and could not have known that the statements and omissions attributed to them were false or misleading at the time the statement or omission was made.

45. Additionally, the nature and timing of the announcement of the Spin-off and Stock Issuance, the false assertions related to “seasoned management,” the false statements relating to management controls; and the acts and omissions detailed in Paragraph 33 above, combined constitute strong evidence of scienter.

46. The foregoing allegations concerning defendants' activities conclusively show knowledge, because they all occurred during the time when, as defendants have now admitted, the Company had failed to properly to control and monitor its costs and obligations, and before the time when defendants issued partial disclosures.

**APPLICABILITY OF PRESUMPTION OF RELIANCE:
THE FRAUD-ON-THE-MARKET DOCTRINE**

47. At all relevant times, New Aetna common shares traded on an efficient market for, inter alia, the following reasons:

(a) New Aetna common stock met the requirements for listing, and was listed and actively traded, on the NYSE, a highly efficient and automated market;

(b) As a regulated issuer, New Aetna filed periodic public reports with the SEC and NYSE;

(c) New Aetna regularly communicated with public investors via established market communication mechanisms, including press releases disseminated on the major newswire services and other wide-ranging public disclosures, such as communications with the financial press, Dow Jones and other similar reporting services; and

(d) New Aetna was followed by securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace. Among the brokerage firms which followed the Company are Merrill Lynch & Co., Donaldson, Luftkin & Jenrette and Salomon Brothers Inc.

48. As a result, the market for New Aetna securities promptly digested current information regarding New Aetna from all publicly available sources and reflected such information in New Aetna's stock price. Under these circumstances, all persons receiving New Aetna shares for value during the Class Period suffered similar injury through their purchase of shares at artificially inflated prices.

49. Based upon the foregoing, Plaintiff and the other members of the Class are entitled to the presumption of reliance upon the integrity of the market.

STATUTORY SAFE HARBOR

50. The federal statutory safe harbor provided for forward-looking statements does not apply here as the statements challenged in the Registration Statement were not forward looking. The statutory safe harbor provided for forward-looking statements, which in certain circumstances does not

apply, is inapplicable to any of the allegedly false statements pleaded in this Complaint. The statutory safe harbor does not apply to New Aetna's press releases, analyst briefings, statements given on background, or statements given to Media interviewers. Additionally, many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the claimed forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to forward-looking statements pleaded herein, the Individual Defendants are liable for those forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by a New Aetna executive officer who knew that those statements were false when made.

**AS AND FOR A FIRST CAUSE OF ACTION
AGAINST ALL DEFENDANTS
FOR VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT
AND RULE 10b-5 PROMULGATED THEREUNDER**

51. Plaintiff repeats and realleges each and every allegation contained above as though fully set forth herein except that this claim does sound in fraud.

52. In addition to the duties of full disclosure imposed on the Individual Defendants as a result of the Registration Statement and their making of affirmative statements and reports, or participation in the making of such statements and reports to the investing public, such defendants had a duty promptly to disseminate truthful information that would be material to investors in compliance with

the integrated disclosure provisions of the SEC as embodied in SEC regulations S-X (17 C.F.R. §210.01 et seq.), and Regulation S-K (17 C.F.R. §229.10 et seq.) and other SEC regulations. This included but was not limited to accurate and truthful information with respect to New Aetna including its financial condition and earnings so that the Spin-Off and Stock Issuance and market price of the New Aetna shares would be based on truthful, complete and accurate information.

53. However, the Individual Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, operations, and future prospects of New Aetna as specified herein.

54. When the Individual Defendants made on December 1, 2000, the positive statements about New Aetna alleged at Paragraph 27 *supra*, such defendants affirmatively knew that those statements were misleading.² However, the Individual Defendants purposely concealed the facts alleged in Paragraphs 28-29 from plaintiff and the Class. The Individual Defendants did so for only one reason: because disclosure of such facts would have adversely affected the Spin-off and Stock Issuance and the proceeds therefrom to New Aetna.

² Plaintiff's allegation of actual knowledge of the facts is based on many circumstances which include but are not limited to the following:

- New Aetna has sophisticated financial controls.
- There was ample time, based on New Aetna's timing of releases of the results of past quarters, for the defendants to gain such knowledge.
- There have been no denials of knowledge despite press interviews.

55. Thus, the Individual Defendants purposely delayed disclosure of material facts. The selective positive disclosure coupled with delayed negative disclosure was intended to manipulate market perceptions and constitute a course of conduct which was intended to and did: (i) deceive the investing public, including plaintiff and other Class members, until at least the partial disclosure on June 7, 2001; (ii) artificially inflate and maintain the Spin-off and Stock Issuance price of the New Aetna shares; and (iii) cause plaintiff and other members of the Class to purchase the New Aetna shares at artificially inflated prices.

56. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein. In doing so, defendants (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the New Aetna shares both in the Spin-off and Stock Issuance and the aftermarket.

57. The Individual Defendants had substantial economic motives to conceal the facts and deceive plaintiff and the market, including the following: by concealing such facts, New Aetna entered into acquisitions in the United States, speculative investments in India and related party transactions. All Individual Defendants are sued in this claim either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below under Section 20 of the Exchange Act.

58. Alternatively, such defendants recklessly misled plaintiff and the Class and prevented them from ascertaining the true facts until on or about June 7, 2001 when partial disclosures began to

be made and began to be more fully analyzed by the market. If defendants did not have actual knowledge of the misrepresentations and omissions alleged, then they were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether statements made prior to and in connection with the Spin-off and Stock Issuance were false or misleading, including an examination of New Aetna's operating procedures.

59. As a result of the dissemination of the materially false and misleading information and failure to disclose all the material facts, as well as the stabilization efforts, the market price of the New Aetna shares was artificially inflated. In reliance on defendants' conduct and the market, plaintiff and the other members of the Class acquired the New Aetna shares at artificially high prices and were damaged thereby.

60. Plaintiff and the Class members reasonably relied or are legally deemed to have reasonably relied on defendants' omissions of the previously alleged material facts. Plaintiff's acquisition of the New Aetna shares at an inflated price was the foreseeable result of the aforementioned material omissions because said omissions led to the boosting of the valuation of the New Aetna shares from the Spin-off and Stock Issuance and inflation of their price in aftermarket trading.

61. By virtue of the foregoing, defendants violated § 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder. As a direct and proximate result of said violation, plaintiff and the other members of the Class suffered damages in connection with the purchase and sale of the New Aetna shares during the Class Period.

**AS AND FOR A SECOND CAUSE OF ACTION
PURSUANT TO SECTION 20(a) OF THE EXCHANGE ACT
AGAINST THE INDIVIDUAL DEFENDANTS**

62. Plaintiff repeats and realleges each and every allegation contained above as though fully set forth herein.

63. The Individual Defendants acted as controlling persons of New Aetna within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the New Aetna's operations and/or intimate knowledge of New Aetna's poor operating results and business setbacks during the class period, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of New Aetna, including the content and dissemination of the various statements that plaintiff contends are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of New Aetna's reports, press releases, public filings and other statements alleged by plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

64. In particular, each of these defendants had direct and/or supervisory involvement in the day-to-day operations of New Aetna and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violation herein, and exercise the same.

65. As set forth above, New Aetna and the Individual Defendants each violated §10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to § 20(a) of the Exchange Act. As a direct and proximate result of defendants' wrongful conduct, plaintiff and other members of the Class

suffered damages in connection with their purchases and/or sales of the New Aetna shares during the Clas Period.

WHEREFORE, plaintiff, on behalf of the Class, prays for judgment as follows:

- A. Declaring this action to be a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and certifying plaintiff as class representative of the Class and its counsel as class counsel;
- B. Against defendants, jointly and severally for damages suffered, as a result of defendants' violation of the securities laws;
- C. Awarding plaintiff and other members of the Class, prejudgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs;
- D. Awarding such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: November 27, 2001

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