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UnitedHealth Brass Face Investor Suit Over Merger Probe

By **Sydney Price**

Law360 (July 8, 2024, 8:23 PM EDT) -- Executives and directors of UnitedHealth Group were hit on Monday with a shareholder derivative suit alleging they concealed that the U.S. Department of Justice reopened an antitrust investigation into the health insurance giant following its acquisition of a healthcare data company and that its brass knowingly sold more than \$100 million of shares before the information was publicly revealed.

According to the suit filed by shareholder Portia McCollum in Minnesota federal court, the Wall Street Journal reported on the DOJ's revived investigation into UnitedHealth's acquisition of Change Healthcare, a payment technology company intended to be integrated into UnitedHealth's existing healthcare claims segment called Optum.

The DOJ initially planned to block the deal on antitrust grounds, alleging in a February 2022 lawsuit that the merger would give UnitedHealth unparalleled access to information about nearly every health insurer, and health data on almost everyone in the U.S.

The merger ultimately proceeded after the DOJ lost a high-profile **bench trial** where a Washington, D.C., federal judge said UnitedHealth had adequately shown that it committed to preventing data sharing across its segments.

In addition to nominal defendant UnitedHealth Group, the suit names 11 individual defendants, including company CEO Andrew Witty, Chair Stephen Hemsley, CEO of the company's UnitedHealthcare segment, Brian Thompson, and several directors.

The suit says that in the four months between learning about the DOJ investigation and the investigation becoming public, insiders sold their UnitedHealth shares, including Hemsley, who sold over \$102 million of his shares, and Thompson, who sold over \$15 million of his shares.

The suit's relevant period begins March 14, 2022, the day after UnitedHealth filed its response to the DOJ's lawsuit. Although UnitedHealth agreed to make "binding commitments to its customers and the government" to maintain firewall processes that protect customer data, this never occurred, the suit alleges.

"Despite assurances to the contrary, there was never a meaningful technological separation between Optum and UnitedHealthcare that prevented the sharing of [customer sensitive information]," the suit states. "As a result, the individual defendants caused the company's public statements to be materially false and misleading at all relevant times."

McCollum accuses the defendants of violating the Exchange Act, breaching fiduciary duties, insider trading and being unjustly enriched.

McCollum's suit also notes that the company is facing a related **securities class action** in Minnesota federal court.

Counsel for McCollum and a representative of UnitedHealth did not immediately respond to requests for comment Monday.

McCollum is represented by Seth D. Rigrotsky, Gina M. Serra and Herbert W. Mondros of Rigrotsky

Law PA, Joshua H. Grabar of Grabar Law Office and Adam Altman of Altman Law PLLC.

Counsel information for UnitedHealth and the individual defendants was not immediately available.

The case is McCollum v. Witty et al., case number 0:24-cv-02643, in the U.S. District Court for the District of Minnesota.

--Editing by Drashti Mehta.

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