

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this "Agreement") dated as of September 14, 2006, is entered into by and between plaintiffs Thomas Turpin and Flora Turpin (the "Named Plaintiffs"), individually and as representatives of the Class (as defined herein) and the Subclass (as defined herein), and defendant Highmark Inc. ("Highmark"). The Named Plaintiffs, Highmark, the Plaintiff Class, and the Plaintiff Subclass are collectively referred to as the "Parties."

WHEREAS, the Named Plaintiffs, through their counsel, have filed an action in the U.S. District Court for the Western District of Pennsylvania, presently styled as *Turpin v. Highmark Inc.*, W.D. Pa. No. 99-1886 (the "Litigation").

WHEREAS, the Named Plaintiffs have asserted claims against Highmark for alleged violations of the Employee Retirement Income Security Act ("ERISA") § 503, 29 U.S.C. § 1133, and the accompanying regulation, 29 C.F.R. § 2560.503-1(g), on their own behalf and on behalf of a class of similarly situated persons.

WHEREAS, by order dated January 10, 2005, the Court certified a class and an opt-in subclass pursuant to Federal Rule of Civil Procedure 23(b)(2); and named Lewis & Feinberg, P.C. (now "Lewis, Feinberg, Renaker & Jackson, P.C."), Claudia Davidson, AARP Foundation Litigation, and Allan N. Karlin & Associates as Class Counsel; and named Thomas Turpin and Flora Turpin as Class Representatives.

WHEREAS, Class Counsel and Counsel for Highmark have investigated the facts relating to the claims alleged and the underlying events and transactions in the Litigation and have made a thorough study of the legal principles applicable to the claims asserted against Highmark.

WHEREAS, Class Counsel and Highmark have engaged in extensive arm's length negotiations concerning the settlement of the claims asserted in the Litigation.

WHEREAS, the Named Plaintiffs and Class Counsel have concluded, based upon their investigation, and taking into account the sharply contested issues involved, the expense and time necessary to prosecute the Litigation through final judgment, the risks and costs of further prosecution of the Litigation, the uncertainties of complex litigation, and the benefits to be received pursuant to this Settlement Agreement, that a settlement with Highmark on the terms set forth herein is fair, just, equitable, reasonable, adequate and in the best interests of the Named Plaintiffs, the Class, and the Subclass, and have agreed to settle this Litigation with Highmark on the terms set forth herein.

WHEREAS, Highmark denies each of the claims asserted against it in the Litigation and denies any and all liability to the Named Plaintiffs, to any member of the Class, and to any member of the Subclass.

WHEREAS, Highmark nevertheless desires to settle the Litigation and the claims asserted in the Litigation, on the terms and conditions set forth herein, for the purpose of avoiding the burden, expense, and uncertainty of continuing litigation, and for the purpose of putting to rest the controversies raised by the Litigation.

NOW THEREFORE, intending to be legally bound and acknowledging the sufficiency of the consideration and undertakings set forth below, the Parties agree, subject to the approval of the Court and the provisions contained herein, that the Litigation and the Settled Claims against the Releasees (all as defined herein) are finally and fully compromised and settled, and that the Litigation shall be dismissed with prejudice as follows:

1. **Denial of Liability; No Admissions.** The Parties enter into this Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense, and risk of further litigation. In entering into this Agreement, Highmark does not admit, and specifically denies, that it has violated any provision of ERISA or any regulations or guidelines promulgated pursuant thereto, or any other applicable laws, regulations, or legal requirements. Neither this Agreement, nor any of its terms or provisions, nor any of

the negotiations connected with it shall be construed as an admission or concession by Highmark (or any of its employees, representatives, affiliates, subsidiaries, or contracting parties) of any such violation or failure to comply with any applicable law, or that a class or subclass was properly certified, or of any other disputed issue of law or fact. Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Highmark or to establish the existence of any condition constituting a violation of or non-compliance with federal, state, local or other applicable law.

2. **Definitions.** As used in this Agreement, the following terms shall be defined as set forth below:

- 2.1 **Adverse Benefit Determination:** “Adverse Benefit Determination” is as defined in 29 C.F.R. § 2560.603-1(m)(4) (2001).
- 2.2 **Challenge.** A “Challenge” means a submission to Highmark that satisfies all of the criteria set forth in § 8.1, below.
- 2.3 **Class Counsel.** “Class Counsel” shall mean: Lewis, Feinberg, Renaker & Jackson, P.C.; AARP Foundation Litigation; Claudia Davidson; and Allan N. Karlin & Associates, who collectively represent the Named Plaintiffs, the Class, and the Subclass.
- 2.4 **Class Member.** “Class Member” means any person who satisfies the requirements set forth in § 3.1, below.
- 2.5 **Effective Date.** The “Effective Date” of this Agreement means the date when all of the conditions set forth in § 15 have occurred; provided, however, that Highmark has not exercised its right of rescission under § 13.6.

- 2.6 **EOB.** “EOB” means an Explanation of Benefits form that Highmark has used and/or uses to advise Class Members of claim determinations.
- 2.7 **EOB Code.** “EOB Code” means a code that has been and/or is used by Highmark in EOBs.
- 2.8 **Final Approval Hearing.** “Final Approval Hearing” means such date as may be set by the Court for the hearing on approval of the class action settlement embodied in this Agreement.
- 2.9 **Full Notice of Class Action Settlement.** “Full Notice of Class Action Settlement” means the notice of the settlement that is attached as Exhibit G to this Agreement, or a substantially similar notice.
- 2.10 **Litigation.** The “Litigation” means *Thomas and Flora Turpin v. Highmark Inc.*, U.S. District Court for the Western District of Pennsylvania, Civil Action No. 99-1886.
- 2.11 **Notice of Appeal Rights.** “Notice of Appeal Rights” means the notice required by 29 C.F.R. § 2560.503-1(g)(iv) (2001), or its predecessor.
- 2.12 **Notice Plan.** “Notice Plan” shall mean the plan for the provision of due notice to all Class Members under this Settlement Agreement that is described in § 13, below.
- 2.13 **OSCAR.** “OSCAR” refers to a certain claims processing system Highmark uses to process certain claims for health benefits.
- 2.14 **Preliminary Approval Order.** “Preliminary Approval Order” means an Order of Court preliminarily or conditionally approving this Agreement and settlement under Federal Rule of Civil Procedure 23, a form of which is attached hereto as Exhibit F.

- 2.15 **INTENTIONALLY OMITTED**
- 2.16 **Regulation.** The “Regulation” means 29 C.F.R. § 2560.503-1(g)(ii) and (g)(iv) (2001) and/or any predecessor thereto.
- 2.17 **Releasees.** “Releasees” shall be defined to include Highmark Inc., its employees, officers, directors, and agents, as well as all employee benefit plans encompassed by the definition of the Class (the “Plans”) and the administrators of those Plans and their employees, officers, directors, and agents.
- 2.18 **Select Rejection Codes.** “Select Rejection Codes” means that subset of EOB Codes used in OSCAR that satisfy the requirements of § 5.1, below.
- 2.19 **Subclass Members.** “Subclass Members” means any Class Member who further satisfies the requirements set forth in § 3.2.1, below.
- 2.20 **Subclass Relief Period.** “Subclass Relief Period” is defined in § 8, below.
- 2.21 **Summary Notice of Class Action Settlement.** “Summary Notice of Class Action Settlement” means the abbreviated notice of the settlement that is set forth in § 13.2, below, or a substantially similar notice.

3. Modification Of Certified Plaintiff Class And Subclass

- 3.1. **Class.** The Parties will jointly request that the Court modify its January 10, 2005 Order to certify for settlement purposes a Class of plaintiffs under Fed. R. Civ. P. 23(b)(2).
- 3.1.1. The Class will be defined as: *“All participants in and all beneficiaries of employee benefit plans, as those terms are defined in ERISA § 3, 29 U.S.C. § 1002, to whom Highmark Inc. (“Highmark”): (1) has provided, provides or will provide benefits and/or has administered, administers or will administer benefit claims; and (2) has issued, issues or will issue an*

Explanation of Benefits form denying in whole or in part a claim for benefits.”

3.1.2. For purposes of this definition of the Class, “*denying in whole or in part a claim for benefits*” means “*the payment of less than the full amount of the claim submitted to Highmark on behalf of the participant or beneficiary as a result of the failure to comply with a term or condition of the group health plan, whether submitted directly by the participant or by a medical services provider or other third party, but excluding the failure to pay that portion of a request for payment that is in excess of what the participant or beneficiary would be entitled to receive under the terms of the particular group health plan.*”

3.1.3. The phrase “*denying in whole or in part a claim for benefits*” excludes Adverse Benefit Determinations that result in the issuance of an EOB Code described in § 5.3, below.

3.2. **Subclass.** The Parties will jointly request that the Court modify its January 10, 2005 Order to certify for settlement purposes a subclass of plaintiffs under Fed. R. Civ. P. 23(b)(2), to be defined as follows:

3.2.1. The Subclass will be defined as: “*All past and present participants in and beneficiaries of employee benefit plans, as those terms are defined in ERISA § 3, 29 U.S.C. § 1002, to whom Highmark Inc. (“Highmark”): (1) has provided benefits and/or administered benefit claims and (2) has issued an Explanation of Benefits form denying in whole or in part a claim for benefits.*”

3.2.2. For purposes of this definition of the Subclass, “*denying in whole or in part a claim for benefits*” means “*the payment of less than the full amount of the claim submitted to Highmark on behalf of the participant or beneficiary as a result of the failure to comply with a term or condition of the group health plan, whether submitted directly by the participant or by a medical services provider or other third party, but excluding the failure to pay that portion of a request for payment that is in excess of what the participant or beneficiary would be entitled to receive under the terms of the particular group health plan.*”

3.2.3. Subject to Court approval, Class Members will not be required to opt into the Subclass, but Subclass members will be required to satisfy any and all requirements of the Settlement Agreement for relief unique to Subclass Members, as further described in § 8, below.

4. **Representations and Warranties.**

4.1. Highmark represents that it (Highmark Inc.), and not an affiliate or subsidiary, processes Class Members’ claims for benefits and/or issues EOBs to Class Members.

4.2. Highmark represents and warrants that it processes the following types of benefit claims on systems other than OSCAR: certain claims for benefits under vision plans; benefits under dental plans; benefits under freestanding prescription drug programs; and certain Medicare supplemental benefits.

5. **Scope of Highmark EOB Codes To Be Modified Prospectively.** Highmark agrees to make modifications, as described below, to the EOBs it uses to advise its members of certain Adverse Benefit Determinations in all employee benefit plans covered by ERISA for which Highmark: (a) acts as the insurer and/or provides administrative services;

(b) processes claims for benefits on the OSCAR claims processing system (or any successor to that system); and (c) issues EOBs.

5.1. The EOBs to which the modifications will be made will be limited to those containing one or more of a certain subset of the rejection codes that appear on Highmark's "CCT 39 Report." Specifically, EOB codes will be modified if they: (a) reflect an adverse benefit determination from the perspective of the member or participant; *and* (b) can, with a reasonable degree of effort, be tied back to the member's benefit booklet or summary plan description; *and* (c) were used on EOBs sent to Highmark members at least once in one of two representative weeks, namely, the weeks ending January 14, 2005 and/or the week ending June 9, 2006.

5.2. The Select Rejection Codes to be modified are set forth on Exhibit A hereto.

5.3. **EOB Codes That Will Not Be Modified.** Generally, EOB Codes that will not be considered Select Rejection Codes, and thus will not be modified as part of this Settlement include:

5.3.1. codes that advise the member or participant that Highmark accepted the claim in full, but applied the amount of the allowed charge to the member's or participant's required co-payment or deductible in accordance with the terms of his/her plan (e.g., codes X5018, X5085);

5.3.2. codes that advise the member or participant that Highmark paid the provider the maximum allowance for the identified service or procedure and the provider's agreement with Highmark requires it to accept that sum as payment in full (e.g., codes R5199, R5188);

5.3.3. codes that, although technically resulting in an Adverse Benefit Determination, do so for reasons that could not reasonably be tied to a

provision of a member's plan, summary plan description, or benefit booklet. These include (without limitation): messages denying the claim: as a "duplicate" claim; on the basis that no such person appears in Highmark's membership database; or on the grounds that the coverage had been cancelled before the service was rendered (e.g., codes S5022, H5150, S5045);

5.3.4. codes that appear only on notices sent to providers (not to members) (e.g., codes H5149, E0631);

5.3.5. codes that advise the member or participant that the Adverse Benefit Determination resulted from an application of medical policy (which would result in the generation of EOB code J1051, which reads: "*An internal protocol, policy, guideline, or rule has been used to process this service. If required, a copy will be provided free of charge by calling our Member Service Department.*"); and

5.3.6. certain codes that ask the member (and/or the provider) to submit additional documentation relevant to the claim (e.g., codes B5047, T5626, R5026).

5.3.7. Examples of EOB Codes that satisfy the requirements of § 5.1(c), but that will not be included in the Select Rejection Codes, are set forth on Exhibit B hereto. The parties understand and agree that Exhibit B is an illustrative, incomplete list of codes that will not be modified.

5.4. **New Codes.** Any new EOB Code that Highmark begins using on its OSCAR claims processing system (or any successor thereto) after August 30, 2006 will be subject to the modifications described in this Agreement to the extent the new code is materially similar in use or application to any code on Exhibit A.

Conversely, any new code that is materially similar in use or application to any code on Exhibit B will *not* be subject to modification.

5.4.1. The parties agree to use best efforts to resolve any disagreement over whether any new EOB Codes are to be modified in accordance with this Agreement. If the parties are unable to resolve any such disagreement within 10 days, they will submit the dispute to a neutral third party (to be jointly determined, or, if the parties cannot agree, to be determined by the Court) who can resolve the dispute in a cost-efficient and timely manner (the "Neutral"). All decisions of the Neutral shall be final and binding and not subject to any type of judicial or administrative review.

6. **The Nature Of The Prospective Modifications To The EOB Codes.** The nature of the modifications to the Select Rejection Codes will differ depending on whether Highmark controls the content and structure of the summary plan description or benefit booklet.

6.1. **Participants Whose Booklets Highmark Controls.** With regard to participants in plans for which Highmark controls the content and structure of the summary plan descriptions ("SPD") or the content and structure of the benefit booklets (including, but not necessarily limited to, plans for which Highmark acts as the insurer) who receive EOBs containing one or more of the Select Rejection Codes, Highmark will add to the EOBs a reference to the section of the SPD or Highmark benefit booklet that further explains the basis for each Adverse Benefit Determination. For these purposes, typical "sections" of a Highmark benefit booklet include sections presently entitled (for example) "*Summary of Benefits*" and "*What Is Not Covered.*" Highmark will not be required to provide more detailed references (e.g., to sub-sections or page numbers of the SPD or benefit booklet); provided, however, that Highmark shall continue to use SPDs or booklets that contain headings with the same (or greater) specificity than the

headings that presently are in use (as reflected on Exhibit C). The following is an illustration:

6.1.1. **Illustration:** EOB Code U5097 presently reads: *“The patient’s coverage does not provide for this vision service. Therefore, no payment can be made.”* For participants described in this § 6.1, EOB Code U5097 would be revised to read: *“The patient’s coverage does not provide for this vision service. Therefore, no payment can be made. See the What Is Not Covered section of the member’s benefit booklet.”*

6.1.2. If and when Highmark materially changes the structure or section headings of any of its benefit booklets, Highmark will send Class Counsel an exemplar of any such new benefit booklet within 30 days after the booklet is placed into service. The parties agree to use their best efforts to resolve any disagreement over whether the section headings are of the same (or greater) specificity than those presently in use. If the parties are unable to resolve any such disagreement within 10 days, they agree to submit the dispute to the Neutral pursuant to all terms of § 5.4.1, above.

6.2. **Participants Whose Booklets Highmark Does Not Control.** With regard to participants in plans for which Highmark does not control the content and structure of the SPD and/or the benefit booklet (for example, by reason of the fact that Highmark provides administrative services only), Highmark agrees to the following:

6.2.1. Upon Highmark’s renewal of an existing administrative services only (“ASO”) agreement or upon the execution of a new ASO agreement, Highmark will request in writing: (a) a copy of the SPD for the plan and all operative summaries of material modifications (“SMM”) thereto; (b) the name, title, and contact information (address, telephone number,

fax number, and e-mail address) of the plan administrator; and (c) that the employer provide Highmark with any new SPD or SMM it may adopt in the future. In the event the SPD's and SMM's are published on the employer's website, and not physically distributed to participants, Highmark will request the identity of that website when executing and/or renewing an ASO agreement. Highmark agrees to retain copies of all such documents it receives for a period of 5 years. Nothing in this Settlement Agreement imposes on Highmark an ongoing obligation to make repeated inquiries for the information described in this § 6.2.1.

6.2.2. With regard to participants in a plan described in § 6.2 who receive EOBs containing one or more Select Rejection Codes, Highmark will include on the EOB, in bold or otherwise conspicuous type, the relevant contact information in Highmark's possession for the plan administrator or such other person or entity who may control the structure of the booklet. Highmark also shall specifically advise the participant on the EOB that he can obtain a copy of his benefit booklet from the plan administrator and/or by consulting the employer's website. The following is an illustration:

6.2.2.1. **Illustration:** EOB Code U5097 would continue to read: "*The patient's coverage does not provide for this vision service. Therefore, no payment can be made.*" The EOBs sent to participants described in this § 6.2 also will contain a notice to the effect of: "*If you need a copy of the member's benefit booklet, contact your plan administrator, [TITLE/POSITION] at [MAILING ADDRESS, TELEPHONE NUMBER, FAX NUMBER AND/OR E-MAIL ADDRESS AND/OR WEBSITE].*"

6.2.2.2. If, despite having made the request described in § 6.2.1 above, Highmark is unable to obtain contact information for the plan

administrator or the other person or entity who may control the structure of the benefit booklet, Highmark will modify the EOBs sent to members of that employer to read as follows: *"If you need a copy of the member's benefit booklet, contact your employer or other plan administrator."*

6.3. **Participants in HMO's.** Notwithstanding anything in § 6.1 or § 6.2, above, with respect to plan participants who participate in Health Maintenance Organizations ("HMO's") who receive EOBs containing one or more Select Rejection Codes, Highmark will include on the EOB, in bold or otherwise conspicuous type, a notice to the effect of: *"Please consult the member's Subscription Agreement for further information about this adverse benefit determination. If you need a copy of the Subscription Agreement, contact [TITLE/POSITION, ADDRESS OF THE APPROPRIATE INDIVIDUAL AT KEYSTONE HEALTH PLAN WEST OR ITS SUCCESSOR]."*

6.4. **Timing.** The changes described in §§ 6.1 through 6.3, above, shall be phased in as Highmark's contracts with groups are renewed, and shall be completed as to all employee benefit plans covered by ERISA not later than January 31, 2008.

7. **Notice Of Members' Appeal Rights.**

7.1. Highmark will continue using the language regarding its members' Notice of Appeal Rights that Highmark currently uses in its EOBs, exemplars of which are attached hereto as Exhibit D. Highmark represents and warrants that it has been using this language since at least January 1, 2003.

7.2. Highmark will continue to include in the Notice of Appeal Rights the name and address of the person or department with authority to decide first-level requests for review of an Adverse Benefit Determination.

- 7.3. Highmark will continue to maintain one or more post office boxes (or street addresses) that are dedicated exclusively to the receipt of requests for first-level reviews of Adverse Benefit Determinations.
- 7.4. If a member's employer (or any entity other than Highmark) performs the first-level review of an Adverse Benefit Determination (or, if there is only one level of review, that one review), Highmark shall: (a) forward the member's request for review to that person or entity not later than the next business day after receiving it; (b) identify the date on which the request was received at Highmark's post office box (or street address); and (c) use its best efforts to have that employer or other entity treat the request for review as having been received by it on the date that Highmark received it.
8. **Additional Relief for the Subclass.** Subclass Members who satisfy the criteria set forth in § 8.1, below, will be entitled to the further relief described in the balance of this Section.
- 8.1. **Criteria.** The Subclass Member lost the ability to appeal and obtain payment for an otherwise covered claim as the result of Highmark not including in its EOBs denying a claim a reference to the specific provision(s) of the employee benefit plan upon which the denial was based; provided, however, that (1) the Subclass Member did not previously appeal the adverse benefit determination; (2) the monetary value of the adverse benefit determination to the member exceeded \$200.00; (3) the Subclass Member did not receive compensation for the disputed amount from any third party (e.g., employer, other benefits provider); (4) the disputed amount was not forgiven or written off (by, e.g., the provider); (5) the adverse benefit determination was not of the type described in § 5.3, above, and (6) the adverse benefit determination was made on or after July 1, 2003 but not later than June 30, 2006.

- 8.2. Members of the Subclass shall have an opportunity to submit Challenges within ninety (90) days from the Effective Date (the “Subclass Relief Period”); provided, however, that if, within the 90-day period, a Subclass member has requested information pursuant to § 8.3, below, then the 90 days shall be extended for that Subclass member by one day for each day from the date of the request to the date that Highmark responds to the request (whether by providing the requested information or informing the Subclass member that the requested information cannot be obtained).
- 8.3. Highmark will not be required to provide to Subclass Members (either with or without requests by such members), copies of all EOBs sent to those Subclass Members during the Subclass Relief Period; provided, however, that if a Subclass Member requests information about one or more specific Adverse Benefit Determinations, including but not necessarily limited to requesting duplicates of EOBs regarding such Adverse Benefit Determinations, Highmark will furnish such information to the extent the information is within its possession, consistent with applicable privacy laws (including HIPAA).
- 8.4. Any member of the Subclass who submits a timely Challenge shall be entitled to have the Challenge reviewed by Highmark, whose decision shall be final and binding, subject only to Class Counsel’s right of review (set forth in § 8.8, below). Highmark will conduct the reviews in good faith, and agrees to apply the same policies and procedures Highmark uses when conducting reviews in the ordinary course of its business (except with respect to the timeframe for conducting such reviews).
- 8.5. The Challenges must be substantially in the form of Exhibit E.
- 8.6. Highmark will send Subclass members written notification of the results of its review of the Challenges within 120 days of Highmark’s receipt of a Challenge.

Provided, however, that in exceptional or unusual cases, Highmark will have the right to request an additional sixty (60) days to process any given Challenge. In such an instance, Highmark will notify the Subclass Member and Class Counsel within the original 120-day period of the date by which Highmark expects to render its decision on the Challenge.

- 8.7. Highmark will be responsible for paying any previously denied claim that it reverses as the result of the good-faith review described in this § 8. Highmark will promptly remit such payments to the member within thirty (30) days of sending the written notice described in § 8.6.
- 8.8. If Highmark receives 100 or fewer timely Challenges, Highmark agrees to provide Class Counsel with copies of: (a) all Applications For Review Of A Denied Claim; (b) the correspondence documenting the result of Highmark's review; and (c) where Highmark has affirmed the original adverse benefit determination, the pertinent plan provisions and any other data on which Highmark based its decision. If Highmark receives more than 100 timely Challenges, Highmark agrees to provide Class Counsel with copies of the documentation described above for a random sample of Challenges (not to exceed 100), to be sampled as requested by Class Counsel in writing. All of the foregoing rights are subject to the execution of any documents that may be required by law (including HIPAA) in connection with protecting individuals' privacy rights, and the parties agree to meet and confer in good faith to agree on means of producing adequate information that would not violate HIPAA or any other law.
- 8.9. Highmark will not be responsible for: (a) late, lost or misdirected Challenges; or (b) obtaining any documentation or other information relevant to the Challenge.

8.10. Highmark has the right to reject, and not review, any Challenge that contains insufficient information to allow Highmark to perform a review. Consistent with Highmark's duty to conduct the review in good faith and in accordance with the policies and procedures it uses when conducting reviews of denied claims in the ordinary course of its business, Highmark will advise Subclass Members who submit materially deficient Challenges of the manner in which the Challenge was incomplete and invite the Subclass member to submit the additional documentation or information, consistent with the deadlines established in this § 8. In any such case, the deadline set forth in § 8.2 above shall be extended thirty (30) days.

9. **Attorneys' Fees and Costs.** Highmark agrees not to oppose Class Counsel's petition for an award of attorneys' fees, costs, and expenses, not to exceed the total amount of \$613,300 to Class Counsel, collectively.

9.1. Within 7 days after the Effective Date, and upon receipt of appropriate wiring instructions from Class Counsel, Highmark shall pay the amount of attorneys' fees, costs, and expenses awarded by the Court to Class Counsel (in accordance with wiring instructions of such counsel).

9.2. In no event shall Highmark be required to pay more than \$613,300, collectively to Class Counsel or any subset of them.

9.3. The effectiveness of this Agreement shall not be conditioned upon or delayed by the Court's failure to approve the payment described in § 9.1, above. Except as provided in §§ 9.1 and 9.2, each party shall bear its own attorneys' fees, costs, and expenses incurred in the prosecution, defense, or settlement of the Litigation, and specifically, without limitation, Highmark shall bear no court costs.

10. **Compensation of Class Representatives.** Highmark will not oppose the petition of Class Counsel for a \$5,000 payment to the Named Plaintiffs (collectively), in recognition for their services as class representatives, and Highmark agrees to pay up to that amount, if awarded by the Court, within 7 days after the Effective Date.

11. **Releases**

11.1. On the Effective Date, the Named Plaintiffs, by operation of this release and the final judgment, hereby do and shall be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged any and all of the Releasees of and from all claims that were or could have been asserted by them in the Litigation, including all claims relating to the specific Adverse Benefit Determinations at issue in the Litigation and all other claims regarding the form, content, and correctness of Adverse Benefit Determinations and other notices of benefit determinations that have been issued to them by Highmark on or before August 30, 2006. Without further action by any person, Named Plaintiffs will be deemed (i) to have consented to dismiss the Litigation with prejudice, subject to § 18, below, (ii) to have released and forever discharged their settled claims; and (iii) to be forever barred and enjoined from instituting or further prosecuting, in any forum whatsoever, including but not limited to any state, federal, or foreign court or regulatory agency, any of their settled claims.

11.2. Members of the Class release the Releasees from and against all claims that were or could have been asserted by them in the Litigation and that could be asserted during the Review and Reporting Period (as defined in § 18, below) that refer or relate in any way to an assertion that any Releasee violated the "Regulation." Class Members also will be barred from using any alleged violation of the Regulation defensively in response to any challenge as to whether they have

exhausted administrative remedies or otherwise timely filed a complaint for judicial review of an Adverse Benefit Determination.

- 11.3. Members of the Subclass further release the Releasees from and against all claims that were or could have been asserted by them in the Litigation and that could be asserted by them based on acts or omissions through June 30, 2006, that refer or relate in any way to an assertion that any Releasee violated the Regulation.
- 11.4. Nothing in this § 11 shall preclude a member of the Subclass from availing himself of the additional potential relief described in § 8, above.
- 11.5. Nothing in this § 11 shall be deemed to release any claim that an Adverse Benefit Determination was substantively in error; provided, however, that Subclass Members have no right to assert that Highmark's decision on a Challenge was substantively in error, as Highmark's decisions on all Challenges shall be final and binding (subject only to Class Counsel's audit rights set forth in § 8.8 above). Conversely, nothing in this § 11 shall be deemed as broadening any Class Member's legal rights to assert that an Adverse Benefit Determination was substantively in error.
- 11.6. Nothing in this § 11 shall be deemed to eliminate or reduce any future rights that any Class Member may have under (a) any federal regulation issued after August 30, 2006, that imposes additional duties on persons or entities issuing Adverse Benefit Determinations or (b) any binding U.S. Department of Labor interpretation of any current federal regulation that would impose any duty on Highmark to obtain, maintain, and/or provide to plan participants copies of SPDs, SMMs or any governing plan instrument.

12. **Preliminary Approval Order.** The Named Plaintiffs and Highmark shall promptly move the Honorable David S. Cercone of the U.S. District Court for the Western District of Pennsylvania for an order, substantially similar to Exhibit F that:
- a. modifies the definitions of the Class and the Subclass under Federal Rule of Civil Procedure 23 consistent with § 3, above ;
 - b. preliminarily approves this Agreement as fair, reasonable and adequate under Federal Rule of Civil Procedure 23(c);
 - c. approves a Summary Notice of Class Action Settlement substantially similar to the one set forth in § 13.2, below;
 - d. approves a Full Notice of Class Action Settlement substantially similar to Exhibit G;
 - e. schedules a Final Approval Hearing;
 - f. establishes a procedure and a timeframe for Class Members to object to the settlement that is substantially similar to the procedure and timeframe set forth in Exhibit G; and
 - g. contains such other and further provisions consistent with the terms and provisions of this Agreement as the Court may deem advisable.

13. **Notice To The Class.** Notice of this Settlement shall be given by the following means:

- 13.1. Within ten (10) business days of Preliminary Approval of this Settlement, Highmark will cause the Full Notice of Class Action Settlement to be posted on the internet at www.EOBTurpinlawsuit.com. This internet site will remain available through the last day for Class Members to assert objections to the Settlement as provided in the Preliminary Approval Order.
- 13.2. Highmark will include a Summary Notice of Class Action Settlement on the front page of its newsletter, for distribution in December 2006. The Summary Notice of Class Action Settlement shall be in substantially the following form, and in 11-point type:

NOTICE: A tentative settlement has been reached in Thomas Turpin and Flora Turpin v. Highmark Inc., a class action lawsuit involving a challenge to the legal sufficiency of Explanation of Benefit notices sent to Highmark group members. Under the terms of the settlement, certain Highmark members may have an opportunity to have previously denied claims reviewed. For additional information about the settlement, go to www.EOBTurpinlawsuit.com or call 1-800-652-9479.

13.3. Highmark will cause the Full Notice of Class Action Settlement to be published in the following newspapers on November 12, 2006, and again on December 16, 2006, or on such other dates as the Court may order:

- Pittsburgh Post-Gazette
- Tribune Review
- Erie Times News
- Philadelphia Enquirer
- Johnstown Tribune-Democrat
- Altoona Mirror
- Harrisburg Patriot News
- Lancaster New Era/Intelligencer/Journal News/Record News
- Lebanon News
- York Dispatch
- Centre Daily Times
- Allentown Call
- Reading Eagle Times

13.4. Highmark will mail a Full Notice of Class Action Settlement to all members of the Subclass: (a) who Highmark can reasonably identify from its membership databases and for whom Highmark has addresses; and (b) who received an Adverse Benefit Determination that included one or more of the EOB Codes identified on Exhibit A hereto; and (c) where, according to Highmark's records, the monetary value of the Adverse Benefit Determination to the member exceeded \$200.00.

13.5. Highmark will bear the cost of giving the notice described in this section.

13.6. Highmark reserves the right to rescind its agreement to the Settlement if the Court approves a notice plan that is materially different than the notice plan described in this § 13.

13.7. No later than seven (7) days before the Final Approval Hearing, Highmark shall file with the Court a declaration verifying that it has fulfilled the notice obligations set forth in this § 13.

14. **Final Approval Order And Final Judgment.** The Parties agree that they will ask the Court to enter, after the Final Approval Hearing, a Final Approval Order and Judgment substantially in the form of Exhibit H hereto. The Final Approval Order and the Judgment will:

- a. find that this Agreement is fair, just, equitable, reasonable, adequate and in the best interests of the Class and the Subclass;
- b. require the Parties to carry out the provisions of this Agreement;
- c. dismiss all claims against Highmark in the Litigation with prejudice;
- d. declare that the Named Plaintiffs, Class Members and Subclass members are bound by the applicable releases set forth in § 11 of this Agreement;
and
- e. reserve continuing jurisdiction over the construction, interpretation, implementation and enforcement of this Agreement for a period of seven (7) years from the Effective Date, as more fully set forth in § 18, below.

15. **Effectiveness of Settlement Agreement.** The “Effective Date” of this Agreement shall be the date when each and all of the following conditions have occurred:

- a. This Agreement has been signed by the Named Plaintiffs, Class Counsel, and Highmark;
- b. The Preliminary Approval Order has been entered by the Court;

- c. The Court-approved Summary Notice of Class Action Settlement and the Full Notice of Class Action Settlement have been duly distributed as ordered by the Court;
- d. The Court has entered the Final Approval Order; and
- e. The Final Approval Order has become final because of the expiration of the time for appeals therefrom without any appeal having been taken or, if review of the order, or any portion thereof, is sought by any person, the matter has been fully and finally resolved by the highest court to which such appeal is taken.

16. **Failure of Condition.** If, for any reason, this Agreement fails to become effective pursuant to § 15, above, the orders, judgment, and dismissal to be entered pursuant to this Agreement shall be vacated, and the Parties will be returned to the status quo prior to entering into this Agreement with respect to the Litigation as if this Agreement had never been entered into. In addition, neither this Agreement, nor any other document in any way relating to it, shall be relied on, referred to or used in any way for any purpose in connection with any further proceedings in this or any related action. In addition, in such event, the Agreement and all negotiations, court orders and proceedings relating thereto shall be without prejudice to the rights of any and all parties hereto, and evidence relating to the Agreement and all negotiations shall not be admissible or discoverable in the Litigation or otherwise.

17. **Changes in Law.** Nothing herein will preclude Highmark from asking the Court to invalidate any remaining injunctive or reporting requirement of this Agreement in the event the U.S. Department of Labor or any court in the requisite jurisdiction over Highmark determines that Highmark is not required strictly to comply with the

Regulation. Highmark will serve Class Counsel with notice of any such motion the same day as the motion is filed. Nothing herein shall preclude Class Counsel from opposing any such request to the Court by Highmark.

18. **Certification of Compliance; Continuing Jurisdiction; Reporting.** Notwithstanding the dismissal of this action and entry of final judgment, the Court shall retain jurisdiction for purposes of interpreting and enforcing the terms of this Agreement for a period of seven (7) years from the date of Final Judgment (the "Review and Reporting Period"). All reporting and disclosure obligations set forth in this Settlement Agreement will cease upon the end of the Review and Reporting Period.

- 18.1. On or about June 1, 2007, Highmark shall make an interim certification to the Court and Class Counsel that provides information regarding the receipt and disposition of Challenges and the status of Highmark's efforts to implement the modifications described in § 6.
- 18.2. On or about June 1, 2008, Highmark shall certify to the Court and Class Counsel that it has implemented the modifications described in §§ 5, 6, and 7, above. The certification of compliance shall include: (a) a declaration made under penalty of perjury; (b) an updated Exhibit A that reflects the modifications made to the Select Rejection Codes; (c) a list of any new EOB Codes that were placed into use on OSCAR after August 30, 2006; (d) exemplars of EOBs of each of the types described in §§ 6.1, 6.2, and 6.3, above; and (e) exemplars of documents demonstrating compliance with § 6.2.1.
- 18.3. Highmark shall file with the Court (and serve on Class Counsel) a certification of continued compliance with the Settlement on or about December 1, 2008, June 1, 2009, June 1, 2010, June 1, 2011, June 1, 2012, and June 1, 2013. These certificates of continued compliance shall take the same form (including exhibits) as the certificate described in § 18.2.

- 18.4 In the event Highmark acquires significant additional members by virtue of merger, acquisition, or other similar event, with respect to any EOBs that fall within the scope of § 5.0 of this Agreement, Highmark will have a reasonable period of time in which to bring those EOBs in compliance with this Agreement. Highmark shall provide information about any such transaction and its plan for any transition with the certificate of compliance it files with the Court.
- 18.5 The dates set forth in this § 18 contemplate that no appeal will be taken, and that the Effective Date will occur prior to June 2007. In the event the Effective Date is delayed (e.g., by reason of a timely-filed appeal from the Final Judgment), the parties agree to extend the reporting dates set forth in this § 18 commensurate with the new Effective Date.

19. **General Provisions**

- 19.1 **Entire Agreement.** This Agreement constitutes the full, complete and entire understanding, agreement and arrangement of and between the Named Plaintiffs, the Class Members, and the Subclass Members, on the one hand, and Highmark, on the other hand, with respect to the settlement of the Litigation and the Settled Claims against the Releasees. This Agreement supersedes any and all prior oral or written understandings, agreements, and arrangements between the Parties with respect to the settlement of the Litigation and the Settled Claims against the Releasees. Except those set forth expressly in this Agreement, there are no other agreements, covenants, promises, representations, or arrangements between the Parties with respect to the settlement of the Litigation and the settled claims against the Releasees.
- 19.2 **Modification in Writing.** This Agreement may be altered, amended, modified or waived, in whole or in part, only in a writing signed by all Parties to this

Agreement. This Agreement may not be amended, altered, modified or waived (in whole or in part) orally.

- 19.3 **Ongoing Cooperation.** The Parties hereto shall execute all documents and perform all acts necessary and proper to effectuate the terms of this Agreement. The execution of documents must take place prior to the date of the Final Approval Hearing.
- 19.4 **Multiple Originals/Execution in Counterpart.** All Parties and Counsel shall sign four copies of this Agreement and each such copy shall be considered an original. This Agreement may be signed in one or more counterparts. All executed copies of this Settlement Agreement, and photocopies thereof (including facsimile copies of the signature pages), shall have the same force and effect and shall be as legally binding and enforceable as the original.
- 19.5 **No Reliance.** Each party to this Agreement warrants that he, she, or it is acting upon his, her, or its independent judgment and upon the advice of his, her, or its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other party, other than the warranties and representations expressly made in this Agreement.
- 19.6 **Governing Law.** This Agreement shall be interpreted, construed, enforced, and administered in accordance with the laws of Pennsylvania, without regard to conflict of laws rules, except insofar as federal law may be held to preempt such laws. This Agreement shall be enforced solely in the U.S. District Court for the Western District of Pennsylvania. Defendants and Class Members waive any objection that each such party may now have or hereafter have to the venue of such suit, action, or proceeding, irrevocably consent to the jurisdiction of this Court in any such suit, action or proceeding, and agree to accept and acknowledge

service of any and all process which may be served in any such suit, action, or proceeding.

- 19.7 **Non-Disparagement.** Class Counsel agrees that any communications concerning this Litigation: (a) shall not disparage the Releasees in any way; and (b) shall acknowledge that Highmark is settling this matter to avoid the cost and expense of litigation and has denied any liability in this matter. Plaintiffs and Class Counsel agree that before issuing or printing any written press releases, articles, or other documents regarding the Settlement of the Litigation, they will send the text of the proposed document to counsel of record for Highmark. If Highmark believes that the text of the document would violate this § 19.7, it shall notify Class Counsel of that fact in writing within 5 business days of receipt of the document. The parties shall thereafter meet and confer in good faith to attempt to resolve the matter. If they are unable to do so within 5 business days after Class Counsel have received Highmark's written objection, then Plaintiffs and Class Counsel shall have the right to proceed with the publication in question 5 business days later, unless Highmark has filed and served a motion relating to such dispute, in which case no publication shall take place until after disposition of that motion by the Court.
- 19.8 **Mutual Preparation.** This Agreement shall not be construed more strictly against one party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that because of the arms-length negotiations between the Parties, all Parties have contributed to the preparation of this Agreement.
- 19.9 **Gender Neutrality.** All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular shall include the plural and vice versa.

19.10 **Power and Authority.** With respect to themselves, each of the Parties to this Agreement represents, covenants and warrants that (a) they have the full power and authority to enter into and consummate all transactions contemplated by this Agreement and have duly authorized the execution, delivery and performance of this Agreement and (b) the person executing this Agreement has the full right, power and authority to enter into this Agreement on behalf of the party for whom he/she has executed this Agreement, and the full right, power and authority to execute any and all necessary instruments in connection herewith, and to fully bind such party to the terms and obligations of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have caused this Agreement to be executed as of the dates set forth below.

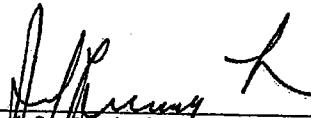
Highmark Inc.

Dated: September __, 2006

By: _____

Its: _____

Dated: September 14, 2006



Counsel for Plaintiffs Thomas Turpin, Flora Turpin, the Class, and the Subclass

After discussing the terms of the proposed settlement of my claims related Highmark's compliance with ERISA and with the Regulation, and after reviewing the Settlement Agreement and Release, I assent to the terms of the proposed agreement.

Thomas Turpin

September __, 2006

After discussing the terms of the proposed settlement of my claims related to Highmark's compliance with ERISA and with the Regulation, and after reviewing the Settlement Agreement and Release, I assent to the terms of the proposed agreement.

Flora Turpin
Flora Turpin

September 23-2006

EXHIBITS

EOB Codes To Be Modified	A
Certain EOB Codes That Will Not Be Modified	B
Highmark Benefit Booklets: Headings	C
Notice of Appeal Rights Language: Exemplar EOB	D
Subclass Claim Form	E
Proposed Order Preliminarily Approving Settlement	F
Full Notice of Class Action Settlement	G
Proposed Final Approval Order And Final Judgment	H

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Defendant Highmark, Inc., hereby certifies that the foregoing Notice Of Filing Of Signatures To The Settlement Agreement And Release Dated September 14, 2006 was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Donna M. Doblick

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