

**ATTORNEY GENERAL OF THE STATE OF NEW YORK**

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**IN THE MATTER OF UNUMPROVIDENT  
CORPORATION**

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**ASSURANCE OF DISCONTINUANCE PURSUANT TO EXECUTIVE LAW § 63(15)**

Pursuant to the provisions of Executive Law § 63(12), and § 349 of the General Business Law, Eliot Spitzer, Attorney General of the State of New York, caused an investigation to be made of UnumProvident Corporation (“Unum”) relating to its practices in the marketing, sale, placement or renewal of insurance, including the payment and reporting of compensation paid to brokers and consultants in connection with such insurance, and based upon the Attorney General’s investigation the following findings have been made:

**The Employee Benefit Insurance Market**

1. Employers often offer insurance as a benefit for their employees. An employer may offer “group” insurance in which the employer is the policyholder, or may serve as a conduit for “voluntary” insurance for which the individual employee is the policyholder. In both cases, insurance carriers generally receive premium payments through the employer – from salary deductions in the case of voluntary insurance.
2. Employers rarely purchase employee benefit policies directly. Rather, they typically hire brokers or consultants to represent their interests in dealings with insurance carriers. Brokers and consultants issue requests for proposals (“RFP’s”) to insurers; present insurers’ proposals to employers; recommend the optimal proposal; and represent the employer in the negotiations that follow. They hold themselves out as the representatives

of the employer seeking insurance, and employers rely on their expertise in navigating the complexities of employee benefit insurance.

3. Some employers compensate consultants by paying a fee; otherwise, insurers generally pay brokers and consultants a commission, calculated as a percentage of the premium paid by the employer. In addition, insurers make other payments to brokers that are contingent on the amount and nature of business the broker "produces" for the insurer. The precise name of these payments may differ among insurers, but they are generically referred to as "overrides" or "contingent commissions." The specific terms of contingent commission agreements vary, but they commonly require the insurer to pay the brokers based on one or more of the following: (1) the volume of business the broker's or consultant's clients place with the insurer; (2) the number of the broker's or consultant's clients that maintain their policies with the insurer; or (3) the profitability or pricing of the business placed by the broker or consultant.
4. Federal law generally requires private employers to disclose compensation paid to brokers and consultants in connection with an employer's purchase of insurance for its employees with group plans in excess of 100 or more participants. This information must be reported on Form 5500, Schedule A ("Form 5500"), and must be filed by the employer with the United States Department of Labor. In situations where the employer has paid a fee to the broker or consultant, the employer will know the amount to report on Form 5500. The employer, however, does not independently know the amount of compensation an insurer may have paid to the broker or consultant. As a result, the insurer usually reports to the employer that amount. This report may be the employer's

only opportunity to learn of compensation its broker or consultant has received from an insurer; if a payment is not disclosed during the creation of the Form 5500, an employer may never know of its existence.

5. UnumProvident (“Unum”) is a major provider of group and individual disability, accident, long term care and life insurance to employers, many of which are based in New York. Unum, like other carriers in the employee benefits insurance industry, views brokers and consultants retained by those employers as “producers,” whose mission is to “produce” business for Unum, and to press their clients to accept Unum’s views on what rates are appropriate.
6. Accordingly, Unum created a myriad of overlapping contingent compensation programs that rewarded brokers based on the volume of business they gave to Unum, or the degree to which the prices paid by their clients met Unum’s targets.
7. Unum also provided brokers with “loans,” whose interest rate or repayment schedule often depended on the amount of business that the broker placed with Unum. In some instances, the loan agreements stipulated that the borrower’s failure to meet certain targets – that is, if it did not provide Unum with sufficient premium – obligated it to begin immediate repayment with interest. Unum has also purchased shares in certain favored brokers, as a means of providing them undisclosed financial support.
8. While the cost of these financial incentives was sometimes passed on to the employer through increases in the premiums paid for insurance, Unum failed to disclose these compensation programs to the employers it insured. These practices continued through early 2005, when in the face of the investigation by the New York Attorney General

(“NYAG”), Unum adopted a broader disclosure policy, and terminated some of these practices.

### **Unum’s Incentive Programs**

9. Unum’s contingent compensation programs included the “Rewards” Program, Special Compensation Agreements (“SCA”), Special Producer Agreements (“SPA”), “service fees” and “earn off” loans. These programs all had as a goal to incentivize brokers to advance Unum’s interests with their clients, in order to create a “partnership/alignment” with brokers. These programs channeled price competition into competition over broker compensation – which was often cheaper for Unum, but of no benefit to the employer. Accordingly, in one internal email, a Unum underwriter advised that it would be worth “pay[ing] a slightly higher % [of override to consultant Universal Life Resources] for retaining profitable life cases- [since] this may be a less expensive way to maintain some of these accounts (vs. going head-to-head with Met & Pru on price right now).”

#### The Rewards Program

10. Unum’s most basic contingent compensation vehicle, the “Rewards” program, was available to any broker that met certain annual thresholds. This program was a matter of public record, and was filed with state insurance departments. Nevertheless, Unum’s field representatives recognized that the Rewards program’s “helps drive year end sales,” when brokers placed coverages to meet its targets. [UP 43687]

#### SCAs

11. In some instances, Unum paid compensation to brokers based on a particular case or set of cases, primarily through Special Compensation Agreements (“SCA”). Through SCAs, Unum paid brokers for purported services and then passed on their costs to employers and employees through their insurance premiums.
12. The purported services provided by brokers under SCAs included “marketing” of Unum products, and the provision of “market intelligence” through reports on how Unum was viewed in the marketplace, and the tactics, strategies and new products of its competitors.
13. These reports also made clear that one of the “services” Unum purchased was brokers’ support in providing Unum additional business. Thus, one broker’s SCA report detailed some of the problems that Unum faced as a result of litigation against Unum, but pledged to “continue to support UnumProvident even during these tough times.”
14. Brokers who received SCA payments did not perform any services for their clients that were not typically performed by brokers who had no SCA, and Unum did not enter into SCAs to fill in service gaps it identified prior to the agreement. One broker who sought an SCA in connection with the placement of Unum insurance told Unum that it was “open to suggestions on things that it can do to help justify these costs,” and offered to assist with the management of Unum’s own, internal benefit program in exchange for SCA payments – a task wholly unconnected with the insurance at issue. The majority of SCA payments were not disclosed to Unum’s customers.
15. Unum paid other forms of case-specific compensation in addition to SCAs, to reward brokers for giving Unum business. In 2004, when broker Maxum Solutions (“Maxum”) wrote Unum to request incentive payments for enrolling employees in one client’s

insurance program, it noted that it had “just completed a challenging renewal on the [employer’s long term disability] coverage . . . that required a considerable amount of extra time, planning and strategy to assure that the coverage remained at UnumProvident.” In granting Maxum’s request, Unum confirmed that Maxum’s “unwavering support of our company and powerful relationship at [the employer] enabled us to retain the LTD business when it recently went out to bid.”

### SPAs

16. Another means by which Unum paid undisclosed compensation was through SPAs. SPAs provided certain important brokers with greater incentives, and more rigorous “production” requirements. In short, SPA recipients had the incentive to provide more business to Unum, in return for higher financial benefits. As of April 2006, 35 to 40 brokers had such agreements.
17. Brokers openly discussed with Unum the relationship between the SPA compensation they were to receive and their directing of business to Unum. Thus, in July 2004, one consultant sent Unum a “list of cases we are trying to preserve for UnumProvident.” The memo asked that the consultant be compensated for delivering the business even when Unum’s rates were higher:

Hopefully, you can see the box we’re in . . . we want to preserve the cases and relationship with UnumProvident but need help with the compensation part of it.

As to one case listed, the memo noted that Unum’s offer was over 20% higher than its rivals, but the broker was nonetheless “trying to preserve at these differentials.” Unum

responded by revising the broker's SPA, and it was able to keep some of the business at issue.

18. Unum kept track of the progress made by brokers towards their SPA goals, and used that information to push brokers to deliver specific insurance contracts to obtain SPA payments. Unum informed its sales staff which brokers had SPA agreements and arranged "[r]egular [VP Level] communication to brokers regarding partnership results." In this way, Unum's sales personnel were made aware of the compensation a particular broker could earn from placing business with Unum, and could use that information to press the broker to meet the thresholds that would gain it additional compensation. Thus one salesperson recognized that once a broker met all its SPA targets, Unum "would find it very difficult to leverage cases."
19. Payments made under the SPAs were not disclosed to the employer. Indeed, until 2004 Unum's standard form SPA contract *required* that its brokers' additional compensation would "not be reflected on ERISA Schedule A reports."

#### Compensation for Selling Rate Increases

20. Beginning in 2003, Unum made efforts to structure broker compensation packages for particular brokers so as to foster renewals of its policies at higher rates.
21. First, Unum conducted a review of "underperforming" brokers – that is, brokers who were not writing business Unum deemed sufficiently profitable. The review recommended that certain brokers needed to help Unum obtain rate increases – in some instances "rigorous rate increases" – from their clients. Following the review, Unum put

in place a system of compensation that incentivized about ten such brokers to sell Unum's products at higher margins – that is, at higher prices to the client. As one Unum employee put it in regard to broker ULR, “it made sense to share . . . only when our pricing targets were exceeded by a certain percent.”

22. This initiative was effected through the addition of a “renewal performance component” to the selected brokers’ SPAs on a range of products, which incentivized brokers to “sell rate increases.” Rate targets were developed for selected blocks of business, and the targeted brokers received additional compensation for meeting them. Unum funded the program so that there was “enough compensation in play . . . to keep brokers focused on placing reasonable rate increases.”
23. Unum did not disclose this program to employers purchasing its insurance.

#### Convention Qualifiers

24. Unum, like many other insurers, gave undisclosed personal incentives to employees of brokers who wrote business for Unum, including expensive trips abroad. For example, Unum ran a “Convention Qualifiers” contest, under which brokers who wrote a certain volume of business for Unum, and their families, were sent on a four-day trip to various desirable locales. In 2004, selected brokers were sent on an all-expense paid trip to Sydney, Australia. Previous “Convention Qualifiers” events were held in Orlando, Florida and Monte Carlo, Monaco. Unum reminded brokers from whom it was seeking particular business that giving such business to Unum might further their ability to win such trips. It did not disclose to employers that Unum rewarded brokers’ employees for

bringing clients to Unum for their employee benefit insurance.

Payments for "Services" Purportedly Provided by Brokers

25. On at least 16 occasions, Unum paid brokers in response to their ad hoc demands to be compensated for "services" they claim to have performed for employers. Unum made little effort to determine if such services were actually performed, if the compensation was commensurate with the work done, or if Unum could have performed the work more cheaply itself.
26. The primary recipient of such "ad hoc" fees was Universal Life Resources ("ULR"). In 2002 alone, Unum paid ULR \$1.3 million in such undisclosed fees. As one Unum executive later noted: "In the past year, we have paid . . . ULR several million dollars and we don't have a lot of formal documentation other than email messages and invoices."
27. Many fee requests from ULR were "deemed to be unreasonable" following Unum's internal review. Nonetheless, Unum provided the funds demanded, and continued to be awarded business by ULR. On most occasions, Unum acceded to ULR's request not to disclose these payments.
28. Unum also made payments to ULR during the proposal process, when they had the potential to impact ULR's decision-making. Thus, during ULR's 2001 representation of Healthcare Corporation of America ("HCA"), Unum agreed to pay ULR a \$10,000 per month "consulting fee" before HCA had selected an insurer.
29. Unum also passed on the cost of certain fees paid to ULR to employers as part of their insurance premiums. Unum retained ULR to perform "communications services" for

many employers, for which ULR charged from \$5 to \$10 per employee. Unum factored these costs into its rates, although it knew that ULR often did not disclose to employers that it would be receiving this fee.

30. ULR was not the only consultant to whom Unum made such undisclosed payments. In 2003, consultant Pacific Resources sought to collect a payment of \$240,000 from Unum, for printing of brochures. That payment had been factored into the pricing for the underlying insurance, but had not been disclosed on the Form 5500.
31. Unum's Director of Compensation Strategy and Distribution conducted an internal inquiry, which indicated that Unum might have been able to perform the same service for a significantly lower fee. As a result, he advised:

UP's willingness to reimburse enrollment/communication costs (non 5500 reported) is predicated on the assumption that the expense is reasonable. We are coming in with a significantly reduced printing cost . . . . I need to understand how PR has arrived at a \$240K price tag. This means a detailed invoice. If we cannot be satisfied that the expense is reasonable, then we'll need to pay the \$240K as 5500 reported income.

32. In response, he received a single internal email in defense of the payment. Among other points, the email noted that Pacific Resources "put this case with us even though we were significantly higher than the competitor." Six hours later, the employee who had initially questioned the payment directed that it be processed in full, and not reported on the Form 5500. Unum had received no additional information or detailed invoice from the broker, and had conducted no further research.
33. In sum, Unum's ad hoc payments and "service" fees to ULR and other brokers reflected yet another undisclosed means for rewarding brokers who gave it business, often at the

expense of the employer.

#### Loans, Advances and Investments

34. Another mechanism by which Unum incentivized brokers was to grant them loans, which it did not disclose to the brokers' employers. These loans were a mechanism to encourage brokers to "increase[] new premium sales, ideally from preferred customer profiles." So long as the "premium return" from increased sales was satisfactory, Unum deemed the loan's return to be "of lesser importance."
35. From 2000 to 2004, Unum provided more than \$12 million in loans to brokers and consultants. Some loans allowed brokers to "earn off" their debt by meeting certain sales criteria set by Unum. Specifically, Unum "structured loans that forgive a percentage of the loan principal in return for a broker selling large amounts of premium attributed to UnumProvident products, that are over-and-beyond the broker's existing, annual new sales level with UnumProvident." If the broker met all of Unum's targets, it would not need to pay back the loan at all.
36. In other cases, the interest rate for the loan was based on whether the broker met certain sales goals. For example, in one such arrangement, if the broker met less than 75% of its target, it would pay 5% higher than a specified federal rate. If, in contrast, it met 100% of the target, the rate would be only 0.25% above the federal rate.
37. Unum sales personnel developed the targets the broker would need to meet to "earn off" the loan. What Unum expected of the borrower was clear: one email noted that a borrowing broker "held up his part of the [loan] deal in placing millions of premium with

us in the past 6 months.”

38. The consequences for brokers if they could not “earn off” the loan by meeting the targets set by Unum could be significant. Failure to meet Unum’s targets could trigger an “amortization event,” requiring the broker to begin repaying the loan with interest. Owners of certain brokers also gave personal guarantees, which made them individually liable in the event of default. One internal Unum analysis characterized this practice as follows: “The [broker’s] partners appear to be willing to put their money (personal security) where their mouths are (i.e. claims of increased participation and sales).”
39. Many of the loan agreements also provided Unum with the right to receive the broker’s future commissions to ensure repayment. In one instance, a broker told Unum prior to receiving the loan that it would “roll over” certain cases to Unum, whose commissions would then secure the loan. The fact that the broker was bringing in this business – which served as additional security for the loan – was a key factor in Unum’s decision to support the transaction.
40. Sometimes, loans were dressed up as “marketing” agreements which obligated Unum to pay fees to the broker, in exchange for which it would receive a “preferred status relative to competing carriers” for certain products, or the broker would agree to “market” Unum insurance to its clients. Unum understood these terms to mean that it would be favored by the broker. Unum often advanced the entire amount of fees to the broker. The broker’s future commissions from the sale of Unum products served as collateral for these advances.
41. Finally, Unum responded to certain brokers’ requests for capital by purchasing a direct

stake in them. Unum's predecessor companies purchased shares in one broker, USI, that amounted to 6.5% of USI common stock prior to its 2002 public offering, and entitled Unum to a seat on the broker's board. Unum also bought shares in other brokers, at their request, including Assurex and BenefitPoint.

### **The NYAG's Investigation and Unum's Improved Disclosure**

42. The NYAG commenced a broad investigation of insurance brokers and insurers, including Unum, in 2004. To address some of the issues raised by the investigation, Unum implemented a policy of fuller disclosure, and began to disclose all contingent compensation retroactive to January 2004. Unum also ceased making new loans or investments in brokers. Unum, however, has not relinquished all the broker debt and shares already in its possession, nor has it disclosed these transactions to employers who hired these brokers.
43. Based on these facts the Attorney General finds that Unum unlawfully engaged in deceptive and/or fraudulent practices by (a) paying brokers and consultants to bring business to Unum or sell rate increases, in violation of their duties to their clients; and (b) failing to disclose or concealing such payments from employers.
44. Unum has cooperated with the Attorney General's investigation.
45. In the wake of the Attorney General's investigation, Unum has adopted and under this Assurance of Discontinuance ("Assurance") will continue to implement a number of business reforms governing the conduct of Unum's employees.
46. The Attorney General and Unum wish to enter into this Assurance to resolve all issues

related to Unum in the Attorney General's investigation.

47. The Attorney General finds the relief and agreements contained in the Assurance appropriate and in the public interest. The Attorney General is willing to accept this Assurance of Discontinuance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding.
48. This Assurance is entered into solely for the purpose of resolving the Attorney General's investigation, and is not intended to be used for any other purpose.
49. Without admitting or denying any of the above allegations, Unum is entering into this Assurance.
50. Neither this Assurance, nor any acts performed nor documents executed in furtherance of this Assurance, may be used as an admission of the above allegations.

NOW THEREFORE Unum and the Attorney General hereby enter into this Assurance and agree as follows:

## **AGREEMENT**

### **Definitions**

For purposes of this Assurance:

1. "Assurance" means this Voluntary Assurance of Discontinuance, and its exhibits.
2. "Attorney General's Investigation" or "Investigation" means the Office of Attorney General's investigation related to Unum's practices in the marketing, underwriting, sale, issuance, renewal or servicing of, and payment of Compensation relating to, Covered Insurance for its Clients or Prospective Clients.
3. "Base Compensation" shall mean a commission paid to a Producer in connection with the

issuance or renewal of Covered Insurance that is a percentage of premium or a fixed dollar amount that will be paid in relation to a Covered Policy.

4. "Bid Proposal" or "Proposal" shall mean any offer made by UNUM to issue, or renew Covered Insurance.
5. "Broker of Record Letter" shall mean a written statement signed by a policyholder advising an insurer that a particular Producer shall act as the policyholder's representative.
6. "Compensation" shall mean anything of material value given to a Producer in connection with Covered Insurance including, but not limited to, money, credits, loans, advances of Compensation, forgiveness of debt, forgiveness of principal or interest, trips, prizes, gifts or the payment of salaries or expenses for an employee of the Producer, except that Compensation shall not include reasonable entertainment expenses.
7. "Contingent Compensation" means any Compensation paid to a Producer in relation to Covered Insurance which is contingent upon any Producer: (a) placing a particular number of policies or a dollar value of premium with UNUM; (b) achieving a particular level of growth in the number of policies placed or a particular dollar value of premium with UNUM; (c) meeting a particular rate of retention or renewal of policies in force with UNUM; (d) placing or keeping sufficient insurance business with UNUM to achieve a particular loss ratio or any other measure of profitability; or (e) providing preferential treatment to UNUM in the placement process, including but not limited to giving UNUM last looks, first looks, rights of first refusal, or limiting the number of quotes sought from insurers for insurance placements; or (f) providing anything else of material value to

UNUM. Contingent Compensation shall not include Supplemental Compensation paid in accordance with the terms and conditions set forth herein.

8. "Covered Insurance" or "Covered Policy" shall mean any insurance (1) provided by Unum which employees, their spouses, domestic partners and/or dependants obtain (whether or not at their own expense) through any group entity (including an employer), including long term disability, short term disability, and life insurance, (2) that is issued or renewed in the United States on or after the Implementation Date, (3) for which Compensation is payable to a Producer, and (4) as to which the policy is issued to the employer or group.
9. "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.
10. "Implementation Date" means July 1, 2007.
11. "Permitted Compensation" shall mean 1) Base Compensation, Supplemental Compensation, and Service Fees paid or offered to be paid to a Producer in connection with Covered Insurance; or 2) Compensation that (a) has been expressly and conspicuously authorized in a separate writing by the Prospective Unum Client or the Unum Client; and (b) is not Contingent Compensation.
12. "Producer" shall mean: 1) any insurance broker as that term is defined in § 2101(c) of the Insurance Law of the State of New York; 2) any independent insurance agent as that term is defined in § 2101(b) of the Insurance Law of the State of New York who offers Covered Insurance for a specific product or line from more than one insurer or affiliated group of insurers; or 3) any entity that solicits Bid Proposals or quotes on behalf of parties seeking Covered Insurance. For the purposes of the Assurance, "Producer" shall

not include any employees of UNUM or any person who discloses in writing to the Prospective Client that such person represents UNUM and will receive Compensation from UNUM in connection with the placement of Covered Insurance.

13. "Prospective UNUM Client" or "Prospective Client" shall mean any person or entity which has solicited a quote or Proposal for insurance that if issued or renewed would be Covered Insurance, or to whom UNUM has provided a quote or Proposal for insurance that if issued or renewed would be Covered Insurance. Any UNUM Client that solicits a quote or Proposal for additional insurance that if issued would be Covered Insurance shall be considered a Prospective UNUM Client under this Assurance.
14. "Service Fees" shall mean any fees paid by UNUM to a Producer in relation to the administration of insurance provided through an employer or other group to a particular Unum Client in connection with the sale or renewal of such insurance in addition to, or outside of, any fees that are treated by UNUM as commissions for the purposes of Schedule A (Form 5500), regardless of whether UNUM is required under ERISA to provide Schedule A (Form 5500) information to the Client. Service Fees shall include, but not be limited to, communication fees, marketing fees, implementation fees, enrollment fees, audit fees and Request for Proposal fees.
15. "Supplemental Compensation" shall mean any periodic Compensation paid to a Producer that is a preset percentage of some or all premiums in respect of Covered Insurance in force with UNUM through that Producer during a previous year. The Supplemental Compensation percentage payable to any Producer must be fixed prior to the start of the year in which Supplemental Compensation is payable to the Producer, and the percentage

may not be varied during the year.

16. "UNUM" shall mean UNUMProvident Corporation, and its officers, directors and employees, and all of the companies listed in Exhibit A hereto.
17. "UNUM Client" or "Client" shall mean any person or entity that is a party to a Covered Insurance contract with UNUM that is in force on the Implementation Date, or for which UNUM issues, or renews Covered Insurance, after the Implementation Date. Any person or entity with whom UNUM contracts to provide or renew Covered Insurance after the Implementation Date, or any person or entity that is a party to an insurance contract assumed or acquired by UNUM after the Implementation Date that is Covered Insurance under this Assurance, shall be a Client for purposes of this Assurance only from the time of the issuance or renewal of such Covered Insurance or the assumption or acquisition of such insurance contract.

#### **Monetary Payments**

18. On or before November 6, 2006, Unum shall pay a penalty of \$1.9 million, by wire transfer to the State of New York.
19. On or before November 6, 2006, Unum shall pay \$15.5 million dollars into a fund (the "Fund"), to be paid to policyholders of Unum Covered Insurance (or their successors) who were represented by Producers that received Contingent Compensation or other Compensation covered by this Assurance ("Eligible Policyholders") between January 1, 2002 and December 31, 2005. No portion of the Fund shall be considered a fine or a penalty.

20. The Fund shall be invested in a designated money market fund subject to the prior approval of the Attorney General.
21. By December 15, 2006, Unum shall propose to the Attorney General for approval a plan of distribution for the fund.
22. Within 60 days after the Attorney General approves the plan of distribution, Unum shall calculate, in accordance with a formula approved by the Attorney General, the amount of money that each Eligible Policyholder may receive from the Fund. Unum will provide the Attorney General with a report setting forth: (i) each Eligible Policyholder's name and address; (ii) the percentage of the Fund and dollar amount to which the Eligible Policyholder shall be entitled; and (iii) the basis on which the Eligible Policyholder's proposed recovery is based. Within 30 days thereafter, Unum will send a notice, subject to the approval of the Attorney General, to each client eligible to be paid from the Fund, setting forth (i) – (iii) above. The notice shall bear the caption of this proceeding and state that the amount paid may increase if there is less than full participation by eligible clients in the Fund.
23. Eligible Policyholders shall have 120 days from the date the notice is sent or until August 1, 2007 (whichever is later, "the Claim Deadline") to request a distribution. Those who voluntarily elect to receive a cash distribution (the "Participating Policyholders") shall tender a release in the form attached hereto as Exhibit B. In the event that any Eligible Policyholder elects not to participate or otherwise does not respond (the "Non-Participating Policyholders"), that client's allocated share may be used by Unum to satisfy any pending or other claims asserted by policyholders relating to these matters. In

no event shall a distribution be made from the Fund to any Non-Participating Policyholder until all Participating Policyholders have been paid the full aggregate amount due as calculated pursuant to paragraph 21 above; nor shall the total payments from the Fund to any Non-Participating Policyholder exceed 80% of that Non-Participating Policyholder's allocated share. If any funds remain in the Fund as of December 31, 2008, any such funds shall be distributed on a pro rata basis to the Participating Policyholders.

24. Within 60 days after the Claim Deadline, Unum shall pay proportionally to each Participating Policyholder as much of that Participating Policyholder's aggregate share of the Fund as possible with the monies then available in the Fund pursuant to a calculation approved by the Attorney General. Within 45 days of payment from the Fund, Unum shall file a report with the Attorney General, certified by an officer of Unum or other individual with personal knowledge, listing all amounts paid from the Fund.
25. Any of the tasks set forth in paragraphs 21 through 24 above may be performed by a settlement administrator (the "Administrator") selected and compensated by Unum. At least one month prior to the Administrator carrying out any tasks under the Assurance, Unum shall provide the Attorney General with the identity of the Administrator, and shall provide a copy of all agreements between Unum and the Administrator.
26. Nothing in any agreement between Unum and the administrator shall be inconsistent with the terms of this Assurance, nor shall any such agreement relieve Unum of any obligation under this Assurance. The Attorney General shall have the right to object to any term of the agreement(s) on the ground that it is inconsistent with this Assurance. The Attorney

General may, in its sole discretion, reject the appointment of any Administrator selected by Unum.

27. In no event shall any of the funds in the Fund, or any investment income earned thereon, be used to pay attorneys' fees, to compensate or pay the costs incurred by the Administrator, or for any other purpose besides compensating policyholders.
28. Nothing in this Assurance shall preclude Unum from sharing the costs of the Administrator with any other entity.
29. The sums set forth in this section are in full satisfaction of Unum's obligations hereunder, and the Attorney General shall not seek to impose on Unum any other financial obligation or liability related to this Assurance.

## CONDUCT

### I. COMPENSATION

30. UNUM shall only pay to Producers, in connection with the issuance, renewal or servicing of Covered Insurance, Permitted Compensation.
31. UNUM shall not offer to pay, directly or indirectly, to any Producer any Compensation in connection with the Producer's issuance, renewal or servicing of Covered Insurance, or solicitation of bids from UNUM for Covered Insurance, other than Permitted Compensation.
32. Except as an allocation of overhead expense, UNUM shall not add in the cost of Covered Insurance any Supplemental Compensation paid to a Producer in connection with a Covered Policy.

33. UNUM may pay Base Compensation and/or Supplemental Compensation to a Producer in respect of Covered Insurance, so long as the terms of this Assurance are met, including the compensation disclosures set forth below.
34. UNUM shall not pay any Service Fees to a Producer unless, in a separate and conspicuous writing: (1) the Client has agreed prior to such payment to the nature and scope of the services to be provided by the Producer and the amount of the Service Fee; (2) the Client has agreed that the services shall be provided by, and payment made to, the Producer; and (3) if Unum provides the same services as those to be performed by the Producer, it has so informed the Client.
35. UNUM shall not pay any Contingent Compensation to a Producer in relation to any Covered Insurance.
  - a. Notwithstanding the foregoing, in the event that UNUM in the future wishes to pay Contingent Compensation to Producers in relation to any Covered Insurance, and provided that one or more other insurers that have signed Assurances with the Attorney General in regard to Covered Insurance continue to pay Contingent Compensation in respect of Covered Policies, UNUM may request amendment to this Assurance to allow for the payment of Contingent Compensation on substantially the same terms and to the same extent as permitted by Assurances entered into by the Attorney General with other insurers.
  - b. In the event UNUM makes any request under subpart (a), UNUM and the Attorney General shall in good faith negotiate an amendment to this Assurance that grants UNUM substantially the same right to pay Contingent Compensation

(if any) to the same extent and upon the same terms and conditions as is afforded to other carriers entering into Assurances with the Attorney General in respect to Covered Insurance. It shall not constitute bad faith if the Attorney General declines a request by Unum for amendment under this section on the ground of Unum's refusal to agree to any term or terms contained in the Assurances with other insurers relied upon by Unum in making its request.

## II. COMPENSATION DISCLOSURES

36. From and after the Implementation Date, UNUM shall disclose to Clients as set forth in this Section II the Compensation paid or payable to a Producer in connection with any Covered Insurance.
37. From and after the Implementation Date, all Producer Compensation contracts entered into or renewed by UNUM shall include a provision obligating the Producer to provide the Compensation Notices and Statements provided for in this Section II to the Client or Prospective Client.
38. Unum shall deliver the Compensation Notices and Statements, and any other required disclosures, to the employer or group whose employees or members may purchase that insurance.
  - A. Compensation Notice
39. UNUM shall deliver to Clients and Prospective Clients in a form substantially similar to Exhibit C hereto a compensation notice setting forth the details of all Compensation the Producer has received and/or may receive from UNUM in connection with any Covered

Insurance purchased from UNUM (the "Compensation Notice").

40. The Compensation Notice shall include:
  - a. A description of Base Compensation payable by UNUM in respect of Covered Insurance and a detailed description of how the Base Commission is calculated or determined and paid.
  - b. The maximum Supplemental Compensation payable by UNUM in respect of Covered Insurance expressed as a specific dollar amount and/or as a percentage of premium and a detailed description of how the Supplemental Compensation is (or would be) calculated or determined.
  - c. The URL for a website, and a toll-free number, by which the Client or Prospective Client may obtain further information about Compensation paid by UNUM, including the specific compensation paid or payable by UNUM in connection with the Client's or Prospective Client's Covered Policy.
  - d. Any equity interest held by Unum in the Producer, if any.
- B. Dissemination of Compensation Notice
41. UNUM shall deliver the Compensation Notice in the following manner:
  - a. The Compensation Notice shall be prominently and clearly included in any Bid Proposal. If no Bid Proposal is made, Unum shall deliver the Compensation Notice to the Prospective Client prior to the time the Prospective Client agrees to the issuance of the Covered Insurance.
  - b. In the event UNUM receives a Broker of Record Letter from any UNUM Client reflecting a change in the Producer for the Covered Insurance, the Compensation

Notice shall be delivered to the UNUM Client within 45 days of receipt of such Broker of Record Letter.

- c. In the event UNUM assumes or acquires a contract of insurance that is Covered Insurance under this Assurance, the Compensation Notice shall be delivered to the UNUM Client within 45 days of such assumption or acquisition.

- 42. With respect to any policy for which a Compensation Notice is provided to the Unum Client or Prospective Unum Client, UNUM shall not pay any Compensation to a Producer in connection with the placement or renewal of any Covered Insurance before the date the Client has acknowledged in writing that the Client has received the Compensation Notice.

C. Compensation Statement

- 43. UNUM shall deliver to the Clients set forth below, in a form substantially similar to Exhibit D hereto, a compensation statement setting forth the details of all Compensation the Producer has received and/or may receive from UNUM in connection with any Covered Insurance purchased from UNUM (the "Compensation Statement").

- 44. The Compensation Statement shall include:

- a. A description of Base Compensation payable by UNUM in respect of Covered Insurance and a detailed description of how the Base Commission is calculated or determined and paid.
- b. The total dollar amount of Supplemental Commission payable by UNUM to the Producer in respect of the Covered Insurance expressed as a specific dollar amount and/or as a percentage of premium and a detailed description of how the

Supplemental Commission is (or would be) calculated or determined.

- c. If any Compensation is payable to a Producer in connection with the issuance or renewal of Covered Insurance other than Base Compensation or Supplemental Compensation, the Compensation Statement shall identify the agreement pursuant to which the Compensation is to be paid and specify the amount of any such Compensation.
- d. The URL for a website, and a toll-free number, by which the Client may obtain further information about Compensation paid by UNUM, including the specific compensation paid or payable by UNUM in connection with the Client's or Prospective Client's Covered Policy.

D. Dissemination of Compensation Statement

- 45. Unum shall deliver the Compensation Statement in the following manner:
  - a. The Compensation Statement shall be prominently and clearly delivered with any contract for Covered Insurance; and
  - b. The Compensation Statement shall be sent annually by mail to all policyholders of a policy for Covered Insurance with UNUM on or before March 30 of each calendar year.

III. CONDUCT RESTRICTIONS

- 46. From and after the Effective Date, Unum shall not make any loans to, or purchase any ownership interest in, any Producer that sells Unum insurance, except with respect to the purchase solely for investment purposes of equity securities of a Producer that are

publicly traded on a national securities exchange that is a) a non-controlling interest; b) does not entitle Unum to board membership; and c) is disclosed in accordance with this Assurance.

47. Before the Implementation Date, UNUM shall develop and implement a written Producer Compensation Plan in compliance with the terms and conditions set forth herein.
48. Before the Implementation Date, UNUM shall implement company-wide written standards of conduct regarding Compensation paid to Producers, consistent with the terms of this Assurance and subject to approval of the Office of the Attorney General, that shall include, *inter alia*, appropriate training of relevant employees, including but not limited to training in business ethics, professional obligations, conflicts of interest, antitrust, trade practices compliance, and record-keeping. UNUM shall submit to the New York Attorney General a draft of the intended policies prior to their dissemination, along with any additional notices required by this Assurance.
49. UNUM shall not engage in violations of Executive Law § 63 (12), the Donnelly Act (Gen. Bus. Law § 340 et seq.), the Martin Act (Gen. Bus. Law § 352-c) and New York Insurance Law.

#### IV. COOPERATION

50. UNUM shall fully and promptly cooperate with the Office of the Attorney General with regard to its Investigation, and related proceedings and actions concerning any other person, corporation or entity, including but not limited to UNUM's current and former employees, concerning the insurance industry. UNUM shall use its best efforts to ensure

that all of its officers, directors, employees, and agents also fully and promptly cooperate with the Office of the Attorney General in the Investigation and related proceedings and actions. Cooperation shall include without limitation: (a) production voluntarily and without service of subpoena of any non-privileged information and all non-privileged documents or other tangible evidence reasonably requested by the Office of the Attorney General, and any compilations or summaries of non-privileged information or data that the Office of the Attorney General reasonably requests to be prepared; (b) without the necessity of a subpoena, using its best efforts to have UNUM's officers, directors, employees and agents attend any proceedings at which the presence of any such persons is requested by the Office of the Attorney General and using its best efforts to have such persons answer any and all inquiries into non-privileged matters that may be put by the Office of the Attorney General (or any of the Office of the Attorney General's deputies, assistants or agents) to any of them at any proceedings or otherwise ("proceedings" include but are not limited to any meetings, interviews, depositions, hearings, grand jury hearing, trial or other proceedings); (c) fully, fairly and truthfully disclosing all non-privileged information and producing all non-privileged records and other evidence in its possession relevant to all inquiries reasonably made by the Office of the Attorney General concerning any fraudulent or criminal conduct whatsoever about which it has any knowledge or information; (d) in the event any document is withheld or redacted on grounds of privilege, work-product or other legal doctrine, a statement shall be submitted in writing by UNUM indicating: (i) the type of document; (ii) the date of the document; (iii) the author and recipient of the document; (iv) the general subject matter of the

document; (v) the reason for withholding the document; and (vi) the Bates number or range of the withheld document. The Office of the Attorney General may challenge such claim in any forum of its choice and may, without limitation, rely on all documents or communications theretofore produced or the contents of which have been described by UNUM, its officers, directors, employees, or agents; and (e) UNUM shall not jeopardize the safety of any investigator or the confidentiality of any aspect of the Office of the Attorney General's Investigation, including sharing or disclosing evidence, documents, or other information with others during the course of the Investigation, without the consent of the Office of the Attorney General. Nothing herein shall prevent UNUM from providing such evidence to other regulators, or as otherwise required by law.

51. These rights shall be in addition to, and not in lieu of, any other investigative process which the Office of the Attorney General may invoke under New York law.

V. NOTICES

52. All notices that are required or permitted under the Assurance shall be in writing and shall be sufficient if personally delivered or sent by certified or registered mail, facsimile transmission or overnight courier. Any notices shall be deemed given upon the earlier date of when received, or the third day after the date when sent by registered or certified mail or the day after the date when sent by overnight courier to the address below or by facsimile to the number below:

For UNUM:

UnumProvident Corporation  
Attn: J. Christopher Collins

18 Chestnut Street  
Worcester, Massachusetts 01608  
(774) 437-6358  
(774) 437-7429 (facsimile)

with a copy to:

Sullivan & Cromwell LLP  
Attn: Gandolfo DiBlasi, Esq.  
125 Broad Street  
New York, New York 10004  
212-558-4000  
212-558-3588 (facsimile)

For the Attorney General:

Office of Attorney General, State of New York  
Attn: Kermitt J. Brooks, Esq.  
120 Broadway  
New York, New York 10271  
212-416-8050  
212-416-8942 (facsimile)

53. Each Party shall provide the other with notification within seven days of any change in its principal address, telephone number or facsimile number. UNUM will provide the Office of the Attorney General with notification of any change in its corporate name and any merger, dissolution, or sale of all or substantially all of its assets.

VI. OTHER PROVISIONS

54. Except as otherwise stated, UNUM shall implement the provisions of this Assurance within sixty days of the Implementation Date. UNUM will not undertake any transaction for the purpose of circumventing the prohibitions contained in this Assurance.
55. The Attorney General will not initiate a case against Unum related to the matters uncovered to date relating to the subject matter of this Assurance.

56. This Assurance is not intended to disqualify Unum, or any current employees of Unum from engaging in any business in New York or in any other jurisdiction. Nothing in this Assurance shall relieve Unum's obligations imposed by any applicable state insurance law or regulations or other applicable law.
57. This Assurance constitutes the entire agreement between the Office of the Attorney General and UNUM pertaining to the Investigation, and represents a voluntary agreement and full and final settlement of the parties' civil claims and defenses as to the matters addressed in this Assurance. It was entered into as a result of arm's length negotiations in which all parties were represented by counsel. The agreements contained herein are made without reliance upon any inducement, statement, promise or representation, other than those expressly contained in this Assurance.
58. This Assurance shall not be construed or interpreted to signify express or implied approval by the Office of the Attorney General or any of its respective agencies, departments or divisions, of any of acts, practices, policies or agreements carried out or entered into by UNUM.
59. Nothing in this Assurance shall relieve UNUM of any obligations imposed by any applicable New York law or regulation. In the event that performance of any provision of this Assurance is rendered impossible by an obligation imposed on UNUM by any New York law or regulation, such law or regulation shall control.
60. This Assurance shall not confer any rights upon any persons or entities besides the Office of the Attorney General and UNUM.
61. Nothing in this Assurance or any of its terms or conditions shall be interpreted to alter in

any way the contractual terms of any Covered Policy issued, assumed or acquired by UNUM or any other insurance contract in force on or before the Implementation Date to which UNUM is or was a party.

62. Nothing in this Assurance constitutes an admission of liability by UNUM as to any issue of fact or law. Neither this Assurance nor UNUM's agreement to enter into this Assurance may be offered or received into evidence in any action as an admission of liability by UNUM, whether arising before or after the Implementation Date.
63. Facsimile transmission of a copy of this Assurance to counsel for each defendant shall be good and sufficient service on UNUM.
64. This Assurance may be executed on separate signature pages, in counterparts or by facsimile, with the same effect as if all parties had signed the same physical page of this Agreement.
65. This Assurance shall be governed by the laws of the State of New York without regard to conflict of laws principles.
66. Any amendments to this Assurance shall be in writing and signed by all parties.
67. The parties represent that an authorized representative of each has signed the Assurance with full knowledge, understanding and acceptance of its terms and that this person has done so with authority to legally bind the respective party.
68. All of the obligations of this Assurance shall be binding on UNUM, its directors, officers, managers, employees, successors, assigns and legal representatives, including but not limited to any person or entity to whom UNUM may be sold, leased or otherwise transferred.

October 31

WHEREFORE, the following signatures are affixed hereto on this \_\_\_\_\_ of 2006.

UNUMPROVIDENT CORPORATION

By: 

CHARLES GLICK  
General Counsel  
1 Fountain Square  
Chattanooga, TN 37402

ELIOT SPITZER  
Attorney General of the State of New York

By:  11-1-06

KERMIT J. BROOKS  
Deputy Attorney General  
120 Broadway  
New York, NY 10271

**EXHIBIT A**

- (1) First Unum Life Insurance Company
- (2) Provident Life and Accident Insurance Company
- (3) Unum Life Insurance Company of America
- (4) Paul Revere Life Insurance Company
- (5) Provident Life and Casualty Insurance Company

**GENERAL RELEASE**

This RELEASE (the "Release") is executed this \_\_\_ day of \_\_\_\_\_, 200\_ by RELEASOR (defined below) in favor of RELEASEE (defined below).

**DEFINITIONS**

"RELEASOR" refers to [fill in name \_\_\_\_\_] and any of its affiliates, subsidiaries, associates, general or limited partners or partnerships, predecessors, successors, or assigns, including, without limitation, any of their respective present or former officers, directors, trustees, employees, agents, attorneys, representatives and shareholders, affiliates, associates, general or limited partners or partnerships, heirs, executors, administrators, predecessors, successors, assigns or insurers acting on behalf of RELEASOR.

"RELEASEE" refers to UnumProvident Corporation and any of its subsidiaries, affiliates, associates, general or limited partners or partnerships, predecessors, successors, or assigns, including, without limitation, any of their respective present or former officers, directors, trustees, employees, agents, attorneys, representatives and shareholders, affiliates, associates, general or limited partners or partnerships, heirs, executors, administrators, predecessors, successors, assigns or insurers (collectively, "Unum").

"Assurance" refers to a certain Assurance of Discontinuance between Unum and the Attorney General of the State of New York ("NYAG") dated \_\_\_, 2006, following an investigation by NYAG relating to same.

**RELEASE**

1. In consideration for the total payment of \$ \_\_\_\_\_ in accordance with the terms of the Assurance, RELEASOR does hereby fully release, waive and forever discharge RELEASEE from any and all claims, demands, debts, rights, causes of action or liabilities whatsoever, including known and unknown claims, now existing or hereafter arising, in law, equity or otherwise, whether under state, federal or foreign statutory or common law, and whether possessed or asserted directly, indirectly, derivatively, representatively or in any other capacity (collectively, "claims"), to the extent any such claims are based upon, arise out of or relate to, in whole or in part, any of the allegations, acts, omissions, transactions, events, types of conduct or matters that are the subject of the Assurance.

2. In the event that the total payment referred to in paragraph 1 is not made for any reason, then this RELEASE shall be deemed null and void, provided that any payments received by RELEASOR shall be credited to Unum in connection with any claims that RELEASOR may assert against Unum, or that are asserted on behalf of RELEASOR or by a class of which RELEASOR is a member, against Unum.

3. This RELEASE may not be changed orally and shall be governed by and interpreted in accordance with the internal laws of the State of New York, without giving effect to choice of law principles, except to the extent that federal law requires that federal law governs. Any disputes arising out of or related to this RELEASE shall be subject to the exclusive jurisdiction of the Supreme Court of the State of New York or, to the extent federal jurisdiction exists, the United States District Court for the Southern District of New York.

4      Releasor represents and warrants that the claims have not been sold, assigned or hypothecated in whole or in part.

Dated: \_\_\_\_\_

RELEASOR: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

## NOTICE REGARDING PRODUCER COMPENSATION

Your insurance or benefits advisor can offer you advice and guidance as you select the policy and provider most appropriate for your needs. At UnumProvident we recognize the important role these professionals play in the sale of our products and services and offer them a variety of compensation programs. Your advisor can provide you with information about these programs as well as those available from other providers. We support disclosure of advisor compensation so that customers can make an informed buying decision.

Producers may be eligible to receive from UnumProvident Base Compensation and Supplemental Compensation.

Unless you have agreed in writing to compensate the producer differently, UnumProvident provides Base Compensation to all producers in connection with the sale of an insurance policy. Base Compensation is a fixed percentage of the policy premium, and is paid by UnumProvident to your Producer so long as your Producer remains the broker of record on your policy.

A producer may also qualify for Supplemental Compensation paid by UnumProvident. For group insurance products, Supplemental Compensation may be paid in an amount equal to a fixed percentage of total group insurance premiums. The Supplemental Compensation may range from 0% to 2% of total premiums. The exact Supplemental Compensation percentage payable to any producer is based upon the total dollar amount of all group insurance premiums or number of policies that producer had in force with UnumProvident in the prior calendar year. Supplemental Compensation may be calculated differently for other insurance products. Supplemental Compensation is not charged directly to policies. Therefore, the premium you pay is not impacted if your producer receives Supplemental Compensation.

If you would like additional information about the range of compensation programs our company offers for you group insurance policy or any other UnumProvident insurance product, you can find more details at [www.unumprovident.com](http://www.unumprovident.com). Should you have other questions not addressed by the website, including the Supplemental Compensation percentage applicable to your producer, or if you want to speak to us directly about advisor compensation, please call 1-800-633-7491.

**PRODUCER COMPENSATION STATEMENT**

Your insurance or benefits advisor can offer you advice and guidance as you select the policy and provider most appropriate for your needs. At UnumProvident we recognize the important role these professionals play in the sale of our products and services and offer them a variety of compensation programs. Your advisor can provide you with information about these programs as well as those available from other providers. We support disclosure of advisor compensation so that customers can make an informed buying decision.

Producers may be eligible to receive from UnumProvident Base Compensation and Supplemental Compensation.

Unless you have agreed in writing to compensate the producer differently, UnumProvident provides Base Compensation to all producers in connection with the sale of an insurance policy. Base Compensation is a fixed percentage of the policy premium, and is paid by UnumProvident to your Producer so long as your Producer remains the broker of record on your policy.

A producer may also qualify for Supplemental Compensation paid by UnumProvident. For group insurance products, Supplemental Compensation may be paid in an amount equal to a fixed percentage of total group insurance premiums. The Supplemental Compensation may range from 0% to 2% of total premiums, depending on the volume of particular insurance products that the producer's clients purchased from Unum in the previous calendar year. Your producer currently is eligible to receive annual Supplemental Compensation in the amount of [q]% of total [group] premiums, including any [group] disability or group life premiums paid by you in connection with preceding policy. Your producer may also be eligible to receive Supplemental Compensation on other insurance products, which may be calculated differently. Supplemental Compensation is not charged directly to policies. Therefore, the premium you pay is not impacted if your producer receives Supplemental Compensation.

[In accordance with your agreement with \_\_\_\_\_ dated mm/dd/yy, you have agreed to the payment of additional amounts to the producer therein in the amount of [\$x.00] or [y% of premium].

If you would like additional information about the range of compensation programs our company offers for your group insurance policy or for any other UnumProvident insurance product, you can find more details at [www.unumprovident.com](http://www.unumprovident.com). Should you have other questions not addressed by the website, or if you want to speak to us directly about advisor compensation, please call 1-800-633-7491.