

**Cairns, Kelly (OIC)**

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**From:** Gitlin, Adam [Adam.Gitlin@usdoj.gov]  
**Sent:** Thursday, March 29, 2012 2:43 PM  
**To:** Cairns, Kelly (OIC)  
**Cc:** ALerner@crowell.com; drgarcia@sheppardmullin.com  
**Subject:** Fw: US v. Humana, 12cv464: Asset Preservation Stipulation and Order  
**Attachments:** Order.pdf

Kelly,

See attached. Judge Walton has signed this order, and DOJ has accordingly recommended to the FTC early termination of the waiting period for the Humana-Arcadian transaction under the HSR statute. Please advise Judge Petersen, and feel free to contact me at 202.386.0698 with any questions.

Best,

Adam Gitlin

Adam Gitlin  
U.S. Department of Justice, Antitrust Division  
450 Fifth Street NW, Suite 4100  
Washington, DC 20530  
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----- Original Message -----

**From:** [Nikhel Sus@dcd.uscourts.gov](mailto:Nikhel_Sus@dcd.uscourts.gov) <[Nikhel\\_Sus@dcd.uscourts.gov](mailto:Nikhel_Sus@dcd.uscourts.gov)>  
**To:** Gitlin, Adam; [alerner@crowell.com](mailto:alerner@crowell.com) <[alerner@crowell.com](mailto:alerner@crowell.com)>; [bryland@crowell.com](mailto:bryland@crowell.com) <[bryland@crowell.com](mailto:bryland@crowell.com)>  
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**Sent:** Thu Mar 29 16:53:13 2012  
**Subject:** US v. Humana, 12cv464: Asset Preservation Stipulation and Order

Please be advised that Judge Walton has signed the above-referenced order.  
A scanned version of the order is attached, and should appear on the docket by tomorrow.

Nikhel Sus  
Law Clerk to the Honorable Reggie B. Walton U.S. District Court for the District of Columbia  
(202) 354-3296  
(See attached file: Order.pdf)

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

HUMANA INC. and  
ARCADIAN MANAGEMENT  
SERVICES, INC.,

*Defendants.*

Civil No. **12 0464 (RBL)**

Judge:

**ASSET PRESERVATION STIPULATION AND ORDER**

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

**I. DEFINITIONS**

As used in this Asset Preservation Stipulation and Order ("Stipulation and Order"):

A. "Acquirer" means the entity or entities to which the Divestiture Assets are divested.

B. "Amarillo Plan" means the individual Medicare Advantage Plan offered by Arcadian solely insofar as such plan serves enrollees in the Amarillo Area under CMS Contract ID H4529, Plan ID 27 or such other contract and plan identification number as CMS assigns to such plan.

C. "Arcadian" means Defendant Arcadian Management Services, Inc., a Delaware corporation with its headquarters in Oakland, CA, its successors and assigns, and its subsidiaries,

divisions, groups, affiliates, partnerships and joint ventures, and their respective directors, officers, managers, agents, and employees.

D. "Arcadian CMS Plans" means the Amarillo Plan, Arizona Plans, Eastern Oklahoma Plan, Fort Smith Plan, Lake Charles Plan, Longview-Marshall Plan, and Shreveport Plan.

E. "Arcadian Contracts" means the CMS contracts pursuant to which the Arcadian CMS Plans are administered.

F. "Arcadian Plan Areas" means the Amarillo Area (Armstrong, Carson, Deaf Smith, Oldham, Potter, and Randall Counties in Texas), Eastern Oklahoma Area (Adair, Delaware, Haskell, Le Flore, McCurtain, Ottawa, Pushmataha, and Sequoyah Counties in Oklahoma), Longview-Marshall Area (Gregg, Harrison, and Henderson Counties in Texas), Arizona Area (Mohave and Yavapai Counties in Arizona), Shreveport Area (Bienville, Bossier, Caddo, Claiborne, De Soto, Red River, and Webster Parishes in Louisiana), Lake Charles Area (Allen, Beauregard, Calcasieu, Cameron, and Jefferson Davis Parishes in Louisiana), and Fort Smith Area (Conway, Crawford, Franklin, Johnson, Logan, Pope, Scott, Sebastian, and Yell Counties in Arkansas).

G. "Arizona Plans" means the individual Medicare Advantage Plans offered by Arcadian solely insofar as such plans serve enrollees in the Arizona Area under CMS Contract ID H0320, Plan IDs 5 and 6 or such other contract and plan identification numbers as CMS assigns to such plans.

H. "CMS" means the Centers for Medicare and Medicaid Services, an agency within the U.S. Department of Health and Human Services.

I. "Divestiture Assets" means all of Arcadian's rights and obligations under the Arcadian Contracts with respect to the Arcadian CMS Plans, and all of Humana's rights and obligations under the Texarkana Contracts with respect to the Texarkana CMS Plans, including the right to offer Medicare Advantage plans to individual enrollees pursuant to the bids filed with CMS for the contract year in effect as of the closing of the divestiture of the Divestiture Assets, and the right to receive from CMS a per member per month capitation payment in exchange for providing or arranging for the benefits enumerated in the bids; and copies of all business, financial and operational books, records, and data, both current and historical, that primarily relate to the Arcadian Contracts or Texarkana Contracts. Where books, records, or data primarily relate to the Arcadian CMS Plans or Texarkana CMS Plans, but not solely to these Plans, Defendants must provide excerpts relating to these Plans. Nothing herein requires Defendants to take any action prohibited by the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

J. "Eastern Oklahoma Plan" means the individual Medicare Advantage Plan offered by Arcadian solely insofar as such plan serves enrollees in the Eastern Oklahoma Area under CMS Contract ID H4125, Plan ID 1 or such other contract and plan identification number as CMS assigns to such plan.

K. "Fort Smith Plan" means the individual Medicare Advantage Plan offered by Arcadian solely insofar as such plan serves enrollees in the Fort Smith Area under CMS Contract ID H5700, Plan ID 9 or such other contract and plan identification number as CMS assigns to such plan.

L. "Health-care provider" means any person or entity that contracts with Arcadian or Humana to provide or arrange for the provision of any health-care service, including hospitals,

physician groups, laboratories, ambulatory surgical centers, nursing facilities, pharmacies, and other providers of health-care services.

M. "Humana" means defendant Humana Inc., a Delaware corporation with its headquarters in Louisville, Kentucky, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their respective directors, officers, managers, agents, and employees.

N. "Lake Charles Plan" means the individual Medicare Advantage Plan offered by Arcadian solely insofar as such plan serves enrollees in the Lake Charles Area under CMS Contract ID H7179, Plan ID 2 or such other contract and plan identification number as CMS assigns to such plan.

O. "Longview-Marshall Plan" means the individual Medicare Advantage Plan offered by Arcadian solely insofar as such plan serves enrollees in the Longview-Marshall Area under CMS Contract ID H4529, Plan ID 30 or such other contract and plan identification number as CMS assigns to such plan.

P. "Medicare Advantage Plan" means Medicare Advantage health maintenance organization plans, Medicare Advantage preferred provider organization plans, and Medicare Advantage private fee-for-service plans, as defined in 42 U.S.C. § 1395w-28.

Q. "Shreveport Plan" means the individual Medicare Advantage Plan offered by Arcadian solely insofar as such plan serves enrollees in the Shreveport Area under CMS Contract ID H7179, Plan ID 2 or such other contract and plan identification number as CMS assigns to such plan.

R. "Texarkana Area" means Columbia, Hempstead, Howard, Lafayette, Little River, Miller, Nevada, and Sevier Counties in Arkansas, and Bowie, Cass, and Titus Counties in Texas.

S. "Texarkana Contracts" means the CMS contracts pursuant to which the Texarkana CMS Plans are administered.

T. "Texarkana CMS Plans" means the individual Medicare Advantage Plans offered by Humana solely insofar as such plans serve enrollees in the Texarkana Area under CMS Contract ID H2944, Plan IDs 13, 197, and 204; Contract ID H4520, Plan ID 6; Contract ID H7188, Plan IDs 3 and 6; and Contract ID H8145, Plan IDs 120 and 122, or such other contract and plan identification numbers as CMS assigns to such plans.

U. "Transaction" means the merger contemplated by the Agreement and Plan of Merger dated as of August 24, 2011, by and among Humana, Humsol, Inc., and Arcadian.

## **II. OBJECTIVES**

The proposed Final Judgment filed in this case is meant to ensure Defendants' prompt divestiture of the Divestiture Assets for the purpose of maintaining competition in the sale of Medicare Advantage Plans in the Arcadian Plan Areas and the Texarkana Area in order to remedy the effects that the United States alleges would otherwise result from Humana's acquisition of Arcadian. This Stipulation and Order ensures that until the divestitures required by the proposed Final Judgment have been accomplished, the Divestiture Assets remain economically viable, competitive, and ongoing Medicare Advantage offerings; and that Defendants will preserve and maintain the Divestiture Assets.

## **III. JURISDICTION AND VENUE**

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto. Defendants waive service of summons on the Complaint, and venue of this action is proper in the United States District Court for the District of Columbia.

#### **IV. COMPLIANCE WITH AND ENTRY OF THE PROPOSED FINAL JUDGMENT**

A. The parties stipulate that a proposed Final Judgment in the form attached as Exhibit A may be filed with and entered by the Court upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (APPA), 15 U.S.C. § 16, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the Defendants and by filing that notice with the Court. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA, which shall be drafted by the United States in its sole discretion. The publication shall be arranged no later than three business days after Defendants' receipt from the United States of the text of the notice and the identity of the newspaper within which the publication shall be made. Defendants shall promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged, and (2) the certification of the publication prepared by the newspaper within which the notice was published.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending its entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation and Order by the parties, comply with all of the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Stipulation and Order.

D. This Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation and Order, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation and Order, and the making of this Stipulation and Order shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made expeditiously, and that Defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

#### **V. PRESERVATION OF THE DIVESTITURE ASSETS**

Until the divestitures required by the proposed Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate the Divestiture Assets as ongoing, economically viable, competitive Medicare Advantage offerings. Defendants shall take all steps necessary to preserve and maintain the value and goodwill of the Divestiture Assets. Within twenty days after the entry of the Stipulation and Order, Defendants will inform the United States of the steps Defendants have taken to comply with the Stipulation and Order.

B. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the Divestiture Assets as economically viable, competitive, and ongoing Medicare Advantage offerings.

C. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the proposed Final Judgment, remove, sell, lease, assign, transfer, destroy, pledge, or otherwise dispose of any of the Divestiture Assets.

D. Defendants' employees whose duties are primarily related to the operation, development, or sales of the Divestiture Assets shall not be terminated or reassigned to other areas within the company except for transfer bids initiated by employees pursuant to Defendants' regular, established job posting policy. Defendants shall provide the United States and any Monitoring Trustee with ten calendar days' notice of such transfer.

E. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the Divestiture Assets, and shall maintain at actual 2011 or previously approved levels for 2012, whichever are higher, all operational, promotional, advertising, sales, technical, customer-service, and marketing support for the Divestiture Assets.

F. Defendants shall provide such support services for the Divestiture Assets as the Divestiture Assets require to operate as economically viable, competitive, and ongoing Medicare Advantage offerings. These services may include federal and state regulatory compliance, including making all customary or required filings with CMS and other federal and state governmental units; human resources; legal; finance; actuarial; claims processing; software and computer operations support; eligibility; enrollment; and utilization management and administrative and such other services as are required to operate the Divestiture Assets.

G. Defendants shall preserve the existing relationships of each health-care provider, customer, and others having business relations with any of the Divestiture Assets, in accordance with current practice.

H. Defendants shall maintain, in accordance with sound accounting principles,

accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income attributable to the Divestiture Assets.

I. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets to an Acquirer acceptable to the United States in its sole discretion.

J. If Defendants fail to divest the Divestiture Assets by May 15, 2012, then for any of the Divestiture Assets not yet divested Defendants shall be required to prepare and submit to CMS, in the ordinary course of business and consistent with past practice, subject to actuarially reasonable adjustment, all necessary filings for the Arcadian CMS Plans and the Texarkana CMS Plans, including Medicare Advantage Plan bids for 2013, so that any such Divestiture Assets remain as economically viable, competitive, and ongoing Medicare Advantage offerings.

K. Subject to the approval of the United States, Defendants shall appoint a person or persons to manage the Divestiture Assets. This person shall be responsible for ensuring Defendants' compliance with this section, and shall have complete managerial responsibility for the Divestiture Assets, subject to the provisions of this Final Judgment. In the event such person is unable to perform his duties, Defendants shall appoint, subject to the approval of the United States, a replacement within ten working days. Should Defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

L. Defendants shall take no action that would interfere with the ability of any Divestiture Trustee appointed pursuant to the proposed Final Judgment to complete the divestitures pursuant to the proposed Final Judgment to an Acquirer acceptable to the United States.

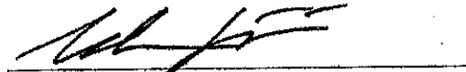
**VI. DURATION OF  
ASSET PRESERVATION OBLIGATIONS**

Defendants' obligations under Section V of the Stipulation and Order shall remain in effect until (1) consummation of the divestitures required by the proposed Final Judgment, or (2) further order of the Court. If the United States voluntarily dismisses the Complaint in this matter, Defendants are released from all further obligations under the Stipulation and Order.

Dated: March 26, 2012

Respectfully submitted,

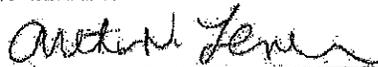
**FOR PLAINTIFF  
UNITED STATES OF AMERICA**



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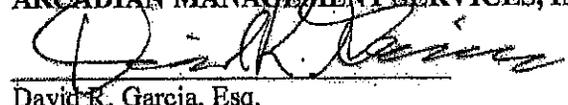
Adam Gitlin  
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**FOR DEFENDANT  
HUMANA INC.**



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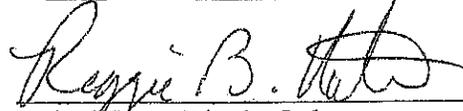
**FOR DEFENDANT  
ARCADIAN MANAGEMENT SERVICES, INC.**



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ORDER

IT IS SO ORDERED by the Court, this 29<sup>th</sup> day of March, 2012.

  
United States District Judge