

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

ANTHEM, INC. and CIGNA CORP.,

Defendants.

Case No. 1:16-cv-01493 (ABJ)

NOTICE OF FILING REDACTED DOCUMENT

Plaintiffs file the attached public version of their Motion *in Limine* to exclude Defendants' declarations and testimony from Defendants' expert witnesses relying upon those declarations, and associated exhibits (ECF #210). This public version includes redactions, which are necessary to comply with court orders regarding confidentiality of party and non-party material.

Dated: November 9, 2016

Respectfully submitted,

/s/ Jon B. Jacobs

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Attorney for United States of America

CERTIFICATE OF SERVICE

I certify that on November 9, 2016, a true and correct copy of the foregoing document was served upon the parties of record via the Court's CM/ECF system.

Dated: November 9, 2016

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

ANTHEM, INC. and CIGNA CORP.,

Defendants.

Case No. 1:16-cv-01493 (ABJ)

(Public, Redacted Version)

**PLAINTIFFS' MOTION *IN LIMINE* TO EXCLUDE DEFENDANTS'
DECLARATIONS AND TESTIMONY FROM DEFENDANTS'
EXPERT WITNESSES RELYING UPON THOSE DECLARATIONS**

Anthem's proposed acquisition of Cigna threatens competition in markets throughout the country. To assess this harm, the testimony of third parties in this case—employers, brokers, consultants, and healthcare providers—is important. Thus, Plaintiffs have listed 14 third parties as possible live witnesses for trial, *see* Ex. A, and designated additional deposition testimony from third parties concerned about the merger. The Defendants are taking a different approach. Although this is their industry, they propose to call at most four third parties as trial witnesses, *see* Ex. B, and rely primarily on the testimony of their own executives, experts, and a paid efficiencies consultant. In lieu of calling more witnesses live or taking their depositions, where they would be subject to cross examination, Defendants have included 43 third-party declarations on their exhibit list. (Ex. C). Three defense experts—Dr. Lona Fowdur, Dr. Robert D. Willig, and Mark Stern—rely upon some of these declarations in their expert reports.

Plaintiffs seek to exclude 42 of these declarations from evidence and preclude testimony from any defense expert relying upon them. (The remaining declaration, from Senator Benjamin

Nelson, is the subject of a separate motion.) Declarations are inadmissible hearsay, and many of these declarations are particularly unreliable: four have been withdrawn, yet remain on Defendants' exhibit list; many contain general, conclusory statements based on nothing more than speculation; and in at least one instance, attorneys for Anthem changed the meaning of a sentence without the declarant's knowledge or consent. Given the problems with Defendants' declarations and the manner in which they were obtained, the declarations should be excluded as evidence.

ARGUMENT

I. Defendants' declarations are inadmissible hearsay.

Out-of-court written statements offered to prove the truth of the matter asserted constitute hearsay. Fed. R. Evid. 801. Unless covered by an exception to the hearsay rule, Fed. R. Evid. 803, or the residual exception, Fed. R. Evid. 807, such statements are inadmissible. Fed. R. Evid. 802. Defendants' declarations fall squarely within the definition of hearsay: they are out-of-court, written statements offered to prove the truth of the matters asserted.

The declarations also fail to satisfy the hearsay exceptions in the Federal Rules of Evidence. The declarations are not business records because they were obtained in anticipation of litigation, not as part of a regularly conducted business activity. *See Sabre Int'l Sec. v. Torres Advanced Enter. Sols., LLC*, 72 F. Supp. 3d 131, 136 n.3 (D.D.C. 2014) (“[R]ecords created in anticipation of litigation do not fall within the business records exception”); Fed. R. Evid. 803(6). The declarations also do not meet the “residual exception” under FRE 807. Under that exception, hearsay is admissible if, among other requirements, it has “equivalent circumstantial guarantees of trustworthiness” and is “more probative on the point for which it is offered than

any other evidence that the proponent can obtain through reasonable efforts.” Fed. R. Evid. 807.¹

Here, for various reasons, these declarations are particularly untrustworthy.

First, four of them—the declarations of [REDACTED], [REDACTED]

[REDACTED], [REDACTED] and [REDACTED]

[REDACTED]—have been withdrawn by the declarants themselves or by their employer.²

Defendants nonetheless listed these declarations on their exhibit list.³ If these declarations are

¹ To meet this exception, Defendants “must demonstrate that the out-of-court declarant is unavailable and that the proponent has made ‘reasonable efforts’ to obtain the presence of the declarant or his testimony for trial.” *Partido Revolucionario Dominicano (PRD) Seccional Metropolitana de Washington-DC, Maryland y Virginia v. Partido Revolucionario Dominicano, Seccional de Maryland y Virginia*, 311 F. Supp. 2d 14, 19 (D.D.C. 2004) (citing *United States v. Hsia*, 87 F. Supp.2d 10, 16 (D.D.C. 2000)). Given that both parties have nationwide service of trial subpoenas for this case (Dkt. #91 at 14), Defendants cannot meet this requirement.

² See Ex. D (e-mail and letter from [REDACTED], senior vice president, secretary and general counsel, [REDACTED] Corp., to Kohsei Ugumori, trial attorney, U.S. Dep’t of Justice (Oct. 7, 2016); e-mail from [REDACTED], vice president and general counsel, [REDACTED], to Melanie Krebs-Pilotti, trial attorney, U.S. Dep’t of Justice, (Oct. 6, 2016) (attaching the declaration of Chief Financial Officer [REDACTED]); e-mail from [REDACTED], vice president, general counsel and corporate secretary, [REDACTED], to Melanie Krebs-Pilotti (Oct. 10, 2016); e-mail from [REDACTED], vice president and associate general counsel, [REDACTED], to Melanie Krebs-Pilotti (Oct. 7, 2016)).

³ Seven other declarations obtained by Defendants have been withdrawn or repudiated and are not listed among Defendants’ exhibits. See Ex. E (e-mail from Thomas Kirsch, Winston & Strawn, on behalf of [REDACTED], vice president of compensation and benefits, [REDACTED], to Melanie Krebs-Pilotti, trial attorney, U.S. Dep’t of Justice (Oct. 12, 2016); e-mail from [REDACTED], paralegal, [REDACTED], to Kohsei Ugumori, trial attorney, U.S. Dep’t of Justice (Oct. 6, 2016) (attaching the withdrawal letter for the declaration of [REDACTED], benefits director); e-mail from [REDACTED], general counsel, [REDACTED], to Kohsei Ugumori (Oct. 13, 2016); e-mail from Erica Deutsch, Bush Gottlieb, to Henry Hauser, trial attorney, U.S. Dep’t of Justice (Sept. 30, 2016) (attaching the withdrawal letter for the declaration of [REDACTED], chief administrative officer of [REDACTED]); e-mail from R. Brendan Fee, Morgan Lewis, to Melanie Krebs-Pilotti (Oct. 11, 2016) (attaching the withdrawal letter for the declaration of [REDACTED] director of health and welfare plans, [REDACTED]); e-mail from Kenneth W. Field, Jones Day, to Sarah Oldfield, trial attorney, U.S. Dep’t of Justice (Oct. 17, 2016) (attaching the withdrawal letter for the declaration of [REDACTED], vice president of system compensation and benefits for [REDACTED]); e-mail from [REDACTED], chief legal officer, [REDACTED], to Henry Hauser (Oct. 11, 2016) (attaching the supplemental declaration of [REDACTED], chief executive officer and founder of [REDACTED])).

not excluded, Plaintiffs request an opportunity to supplement their exhibit list with the evidence that the declarations have been withdrawn.

Second, many of these declarations are formulaic and consist largely of unfounded speculation. Nine of them contain identical or near identical conjectures about the merger's effects and post-merger competition among insurers.⁴ For example, each of these declarants "expect[s] the merger to lead to better pricing" and believes that his or her employer "can easily replace Anthem with other health-insurance companies (besides Cigna) that offer the same health-insurance products of the same quality and price."⁵ Seven other declarations share similarly speculative assertions.⁶

Given the expedited discovery schedule in this case, Plaintiffs were unable to depose all of the persons who signed declarations for Defendants. But some who were deposed testified to the speculative nature of their written statements. For example, [REDACTED], a vice president for [REDACTED], testified in her deposition as follows:

Q: So when you say the merger will complement Anthem's health plans with Cigna's strong care management programs, that's really your—your speculation about what Anthem's plans are for Cigna's care management programs, correct?

A: That's correct.

[REDACTED] dep. at 23:11–17. And [REDACTED], a vice president at [REDACTED], testified similarly:

Q: And so it's based on your assumptions and it's correct that you're speculating in everything you say in here, correct?

Mr. Leddicotte: Objection as to form.

A: Correct.

⁴ See DX0179; DX0181; DX0182; DX0183; DX0184; DX0187; DX0190; DX0191; DX0192.

⁵ *Id.*

⁶ See DX0180; DX0185; DX0188; DX0189; DX0193; DX0194; DX0195.

Q: You're speculating about things that may or may not happen if Anthem acquires Cigna, correct?

Mr. Leddicotte: Objection as to form.

A: Correct.

Q: Because you really don't know what Anthem's going to do if they acquire Cigna, right?

A: Correct.

Mr. Leddicotte: Objection as to form.

██████ dep. at 72:1–15.⁷

Remarkably, during depositions of these declarants, Anthem's own counsel objected, on grounds of speculation, to questions parroting the declarations' cookie-cutter assertions. For example, multiple declarants claimed they could switch to another insurer if the combined Anthem–Cigna company raised prices.⁸ But when Plaintiffs' counsel asked a declarant if he would switch insurers in response to a price increase, Anthem objected on speculation grounds.⁹ Anthem also objected to Plaintiffs' questions about the merger's impact on competition,¹⁰ even though several declarations predict there will be sufficient competition post-merger.¹¹

Finally, Plaintiffs uncovered one instance in which Anthem's counsel changed the meaning of a sentence in a declaration without the declarant's knowledge or consent. ████████

██████████ asked Anthem to make multiple revisions before she would sign a declaration,

⁷ ████████'s declaration is not listed among Defendants' exhibits.

⁸ See DX0179; DX0181; DX0182; DX0183; DX0184; DX0187; DX0188; DX0190; DX0191; DX0192.

⁹ ████████ dep. at 32:9–14 (“Q: So if all else being equal, if Anthem raised the ASO fees by, let’s say, five percent, would you switch insurers at that point? Ms. Mims: Objection, calls for speculation. A: I don’t know. I don’t know.”).

¹⁰ See, e.g., ████████ dep. at 41:14–19 (“Q: Do you know how a merger of Anthem and Cigna might change the competitive dynamics in the industry? Mr. Leddicotte: Objection as to form. A: No. Mr. Leddicotte: Calls for speculation.”).

¹¹ See DX0179; DX0181; DX0182; DX0183; DX0184; DX0187; DX0188; DX0190; DX0191; DX0192.

including replacing the word “secure” with “benchmark” in a sentence about the consulting firm

██████████.¹² Anthem agreed to ██████████’s revisions, but substituted the word “obtain” for “benchmark,” which materially changed the meaning of the sentence from what ██████████ intended.¹³ ██████████ signed the declaration without knowing that Anthem had altered it and remained unaware of Anthem’s alteration until she was deposed.¹⁴

Plaintiffs are not alone in their concerns with these declarations.

II. Defendants' expert witnesses should be precluded from offering testimony based on these declarations.

Three of Anthem’s five expert witnesses—Dr. Lona Fowdur, Dr. Robert D. Willig, and Mark Stern—cite to third-party declarations in their expert and supplemental and rebuttal reports. Experts can rely upon inadmissible evidence, but only if it would be reasonably relied upon by

¹² [REDACTED] dep. at 16:15–17:10, 44:10–45:19.

¹³ [REDACTED] dep. at 20:18–21:18, 44:10–47:14 (“Q: Do you have any reason to think that anyone other than Anthem’s counsel inserted that word “obtain”? A: I don’t think so. . . . Q: What does the word “obtain” mean to you in that context? A: It means to get, similar to secure. Q: So that has a different meaning than the word “benchmark,” which was the change you asked for, right? A: I believe so, yes. Q: So inserting the word “obtain” there changes the meaning of that sentence from the meaning you intended it to say when you revised the first draft, correct? A: I believe so, yes.”).

¹⁴ *Id.* at 46:11–20.

¹⁵ PX0033.

other experts in the field. Fed. R. Evid. 703. Reasonable reliance, in turn, “requires that the facts be sufficiently trustworthy for the reliance to be reasonable.” Michael H. Graham, 5 Handbook of Fed. Evid. § 703:1 (7th ed.). Because Defendants’ declarations are unreliable, their experts should be precluded from offering opinion testimony based on those declarations.

CONCLUSION

Plaintiffs request that the Court exclude Defendants’ declarations and testimony from Defendants’ expert witnesses relying upon those declarations.

Dated: November 9, 2016

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CERTIFICATE OF SERVICE

I certify that on November 9, 2016, I caused a copy of the foregoing to be served upon all parties of record via the Court's CM/ECF system.

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Exhibit A

United States, et al. v. Anthem, Inc. and Cigna Corp.

Case No. 1:16-cv-01493 (ABJ)

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

ANTHEM, INC. and CIGNA CORP.,

Defendants.

Case No. 1:16-cv-01493 (ABJ)

PLAINTIFFS' FINAL FACT WITNESS LIST

As required by the Case Management Order (Dkt. #91) and Federal Rule of Civil Procedure 26(a)(3)(A), Plaintiffs identify the following fact witnesses that Plaintiffs expect to present at trial other than solely for impeachment. In addition to the witnesses listed below, Plaintiffs reserve the right to call witnesses listed on the Defendants' witness list. Plaintiffs also expect to call two expert witnesses who have already been separately identified.

1.

[REDACTED]

2.

[REDACTED]

3. **David Cordani**
Cigna Corp.

4. [REDACTED]

5. **Jerry Kertesz**
Anthem, Inc.

6. **Charles Smith**
Cigna Corp.

7. **Joseph Swedish**
Anthem, Inc.

8. **Jeffrey Thackeray**
Cigna Corp.

In addition, in light of the Court's October 4 bifurcation order (Dkt. #178), Plaintiffs may call the following individuals at trial other than solely for impeachment if the need arises:

9. [REDACTED]

10. **Eric Dahms**
Anthem, Inc.

11. [REDACTED]

12. **Thomas Golias**
Cigna Corp.

13. [REDACTED]

14. [REDACTED]

15. [REDACTED]

16. **Burke King**
Anthem, Inc.

17. **Lisa Guertin**
Anthem, Inc.

18.

[REDACTED]

19.

[REDACTED]

20.

[REDACTED]

21.

Eugene Rapisardi
Cigna Corp.

22.

[REDACTED]

23.

[REDACTED]

24.

Douglas Weners
Anthem, Inc.

25.



Dated: October 7, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2016, a true and correct copy of the foregoing document was served via-email upon all counsel of record.

Dated: October 7, 2016

Respectfully submitted,

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Exhibit B

United States, et al. v. Anthem, Inc. and Cigna Corp.

Case No. 1:16-cv-01493 (ABJ)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

ANTHEM, INC. and CIGNA CORP.,

Defendants.

Case No. 1:16-cv-01493-ABJ

DEFENDANTS' FACT WITNESS LIST

In accordance with the Final Case Management Order dated August 31, 2016 (ECF 91), Defendants hereby provide Defendants' list of fact witnesses that may be called live at trial during Defendants' case-in-chief. In addition to the witnesses listed below, Defendants reserve the right to call witnesses listed on the Plaintiffs' witness lists, and to call one or more custodians of records and witnesses to summarize voluminous writings, recordings or data. Defendants also reserve the right to identify additional witnesses following any additional disclosures from Plaintiffs. Defendants also reserve the right to identify as witnesses all persons yet to be deposed in these actions, but who are deposed prior to trial. The identification of a witness on this list is not an indication or representation that either Defendant controls a witness or can compel his or her attendance at trial.

1. James Augur – Anthem
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2. 
3. Daniel Corcoran – Anthem
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7. Colin Drozdowski – Anthem
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9. Lisa Guertin – Anthem
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15. Charles Burke King – Anthem
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16. Steven Martenet – Anthem
White & Case LLP
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Washington, DC 20005
17. Swati Mathai – Anthem
White & Case LLP
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Washington, DC 20005
18. Dennis Matheis – Anthem
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19. 
20. Michael Ramseier – Anthem
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22. 
23. Stephen Schlegel – Anthem
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Washington, DC 20005
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Dated: October 7, 2016
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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2016, a true and correct copy of the foregoing Defendants' Fact Witness List was served via e-mail, pursuant to Paragraph 18 of the Case Management Order (Dkt. 91), upon all counsel of record.

Dated: October 7, 2016
Palo Alto, CA

Respectfully submitted,

/s/ Heather M. Burke

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Exhibit C

United States, et al. v. Anthem, Inc. and Cigna Corp.

Case No. 1:16-cv-01493 (ABJ)

EXHIBIT C

1. DX0001, Declaration of [REDACTED]
(3/21/16)
2. DX0176, Declaration of [REDACTED] (7/5/16)
3. DX0177, Declaration of [REDACTED] (6/29/16)
4. DX0178, Declaration of [REDACTED] (7/20/16)
5. DX0179, Declaration of [REDACTED] (6/17/16)
6. DX0180, Declaration of [REDACTED] (6/15/16)
7. DX0181, Declaration of [REDACTED] (6/21/16)
8. DX0182, Declaration of [REDACTED] (8/22/16)
9. DX0183, Declaration of [REDACTED] (6/23/16)
10. DX0184, Declaration of [REDACTED]
(7/18/16)
11. DX0185, Declaration of [REDACTED] (6/16/16)
12. DX0186, Declaration of [REDACTED] (6/8/16)
13. DX0187, Declaration of [REDACTED] (8/19/16)
14. DX0188, Declaration of [REDACTED] (6/21/16)
15. DX0189, Declaration of [REDACTED] 6/22/16)
16. DX0190, Declaration of [REDACTED] (7/20/16)
17. DX0191, Declaration of [REDACTED] (6/21/16)
18. DX0192, Declaration of [REDACTED]
(6/22/16)
19. DX0193, Declaration of [REDACTED] (6/16/16)

20. DX0194, Declaration of [REDACTED] (7/13/16)
21. DX0195, Declaration of [REDACTED] (7/20/16)
22. DX0196, Declaration of [REDACTED] (3/21/16)
23. DX0289, Declaration of [REDACTED] (unsigned;
undated)
24. Defendants' Supplemental Ex. 16, [REDACTED]
[REDACTED] (1/26/16)
25. Defendants' Supplemental Ex. 24, [REDACTED]
[REDACTED] (7/12/16)
26. ANTM-DDC-002871612, [REDACTED] (5/31/16)
27. ANTM-DDC-002871614, [REDACTED] (6/27/16)
28. ANTM-DDC-002871622, [REDACTED]
(7/29/16)
29. ANTM-DDC-002871629, [REDACTED] (6/29/16)
30. ANTM-DDC-002871636, [REDACTED]
(7/6/16)
31. ANTM-DDC-002871639, [REDACTED] (8/30/16)
32. ANTM-DDC-002871642, [REDACTED]
[REDACTED] (8/30/16)
33. ANTM-DDC-002871643, [REDACTED]
[REDACTED] (3/21/16)
34. ANTM-DDC-002871646, [REDACTED]
(6/20/16)

35. ANTM-DDC-002871648, [REDACTED]
[REDACTED] (8/5/16)
36. ANTM-DDC-002871650, [REDACTED]
[REDACTED] (7/15/16)
37. ANTM-DDC-002871654, [REDACTED] (6/28/16)
38. ANTM-DDC-002871656, [REDACTED] (3/15/16)
39. ANTM-DDC-002871659, [REDACTED] (7/8/16)
40. ANTM-DDC-002871672, [REDACTED]
(6/1/16)
41. ANTM-DDC-002871675, [REDACTED] (7/8/16)
42. ANTM-DDC-002871718, [REDACTED]
[REDACTED] (3/10/16)
43. ANTM-DDC-002891728, Declaration of Sen. Benjamin Nelson (10/6/16)

Exhibit D

United States, et al. v. Anthem, Inc. and Cigna Corp.

Case No. 1:16-cv-01493 (ABJ)

From: [REDACTED]
Sent: Friday, October 7, 2016 11:30 AM
To: Ugumori, Kohsei (CIV) <KUgumori@civ.usdoj.gov>
Cc: Comenetz, Aaron <Aaron.Comenetz@ATR.USDOJ.gov>
Subject: RE: Subpoena to testify at deposition: [REDACTED]
Attach: Anthem-Cigna Letter to DOJ 10-7-16.pdf

Kohsei,

As discussed on the telephone yesterday, attached is a letter from [REDACTED] concerning the fact that [REDACTED] was not authorized and withdrawing the statement. Please confirm that the subpoena to depose [REDACTED] is cancelled.

Also, please let me know if you plan to share this with Anthem. I would like to make them aware of that the statement has been withdrawn if you are not going to do so.

Please feel free to contact me if you have any questions.

Regards,



Please join me in making a difference. Think before you print.

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From: Ugumori, Kohsei (CIV) [mailto:Kohsei.Ugumori@usdoj.gov]
Sent: Thursday, October 06, 2016 2:38 PM
To: [REDACTED]
Cc: Comenetz, Aaron
Subject: Subpoena to testify at deposition: [REDACTED]

Dear Mr. [REDACTED]

Thank you for agreeing to service by email. Attached please find the subpoena. If you have any questions, please don't hesitate to contact me.

Sincerely,
Kohsei

Kohsei Ugumori
Attorney
U.S. Department of Justice
450 5th Street, N.W.
Washington, D.C. 20001
Tel: 202.532.4600
E-mail: kohsei.ugumori@usdoj.gov

DOJ-EMAIL-00086094

October 7, 2016

Mr. Kohsei Ugumori, Attorney
U.S. Department of Justice
450 5th Street, N.W.
Washington, D.C. 20001

Re: Merger of Anthem and Cigna

Dear Mr. Ugumori,

Reference is made to that certain customer statement signed by [REDACTED] on July 13, 2016 in connection with the merger of Anthem and Cigna.

The signatory to the statement, [REDACTED] is the Director of Compensation and Benefits for [REDACTED]. [REDACTED] reports to the Vice President of Compensation and Benefits for [REDACTED], who in turn reports to [REDACTED] Senior Vice President, Human Resources. As I advised you, Ms. [REDACTED] did not consult with her supervisors, the [REDACTED] Legal Department or any other [REDACTED] corporate officer prior to executing the statement. In her capacity with [REDACTED] Ms. [REDACTED] is not a corporate officer of [REDACTED] and did not have the corporate authority to execute the statement on behalf of [REDACTED].

As I further advised you, the statement executed by Ms. [REDACTED] does not represent the official position of [REDACTED]. [REDACTED] is not in a position to know whether the matters referenced in Ms. [REDACTED] statement are correct and/or the impact the merger of Anthem and Cigna will have on the market or its customers. Accordingly, [REDACTED] hereby withdraws the statement in its entirety.

Please feel free to contact me if you have any further questions.

Very truly yours,

[REDACTED]

[REDACTED]



DECLARATION OF [REDACTED]

1. I am the Chief Financial Officer of [REDACTED] Inc. (the "Company"). I am authorized to submit this Declaration on behalf of the Company.
2. I have reviewed the attached Declaration of [REDACTED]
3. Ms. [REDACTED] was not authorized to sign that Declaration on behalf of the Company or to express opinions on the proposed transaction on behalf of the Company.
4. The Company hereby revokes the attached Declaration.
5. The Company is neutral as to the proposed transaction.

I declare under penalty of perjury that the foregoing is true and correct.

[REDACTED]

DECLARATION OF [REDACTED]

I am [REDACTED] and I am Director of Benefits at [REDACTED]
I am based in [REDACTED] is an Anthem customer.

I support the proposed Anthem-Cigna merger. My statement is based on my personal knowledge and experience.

I support the Anthem/Cigna merger because:

- I believe that the combined Anthem/Cigna company will be able to offer more health care product choice than Anthem or Cigna alone could provide today.
- I expect the merger to lead to better pricing. For example, the combined Anthem/Cigna company can take advantage of the better of Anthem's or Cigna's discounts for its customers, including my company.
- I am not concerned about the merger causing prices to go up. If the combined Anthem/Cigna company raised its prices after the merger, we would be able to switch to another health insurer and receive comparable high quality insurance at competitive prices.
- I do not see the merger as limiting the options for health insurance, and I am not concerned about having my choice of health care options after the merger. There are many health insurers that offer competitive options in terms of products, provider networks, and price, among other things. I believe there will continue to be a variety of choices and competitive options after the Anthem-Cigna merger is completed.
- I also believe that my company can easily replace Anthem with other health-insurance companies (besides Cigna) that offer the same health-insurance products of the same quality and price.

I declare under penalty of perjury that the foregoing is true and correct.

[REDACTED]



From: [REDACTED]
Sent: Friday, October 7, 2016 4:00 PM
To: Krebs-Pilotti, Melanie <Melanie.Krebs-Pilotti@ATR.USDOJ.gov>
Cc: [REDACTED]
Subject: [REDACTED] Anthem-Cigna Merger

Melanie:

This is further to our recent conversation related to [REDACTED] Declaration executed on June 23, 2016 related to the proposed Anthem-Cigna merger. [REDACTED] was not authorized to submit a Declaration of support on behalf of [REDACTED]. [REDACTED] has not taken a position and is neutral on this matter. [REDACTED] has stated to me that she is withdrawing her Declaration.

Please let me know if you have any questions.

[REDACTED]

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Exhibit E

United States, et al. v. Anthem, Inc. and Cigna Corp.

Case No. 1:16-cv-01493 (ABJ)

From: Kirsch, Thomas L. <TKirsch@winston.com>
Sent: Wednesday, October 12, 2016 5:22 PM
To: Krebs-Pilotti, Melanie <Melanie.Krebs-Pilotti@ATR.USDOJ.gov>
Subject: [REDACTED]
Attach: Cigna Merger Document.pdf

Hi Melanie:

I am following up on our call today. [REDACTED] will withdraw her declaration (attached). Please let me know if the deposition will proceed on the 18th. Thanks.

Tom

Thomas Kirsch

Winston & Strawn LLP

D: +1 (312) 558-3220

M: +1 (312) 375-0798

winston.com

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& STRAWN**
LLP

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DECLARATION OF [REDACTED]

I am [REDACTED] and I am Vice President, Compensation & Benefits at [REDACTED]

[REDACTED] I am based in [REDACTED]

[REDACTED] is an Anthem customer.

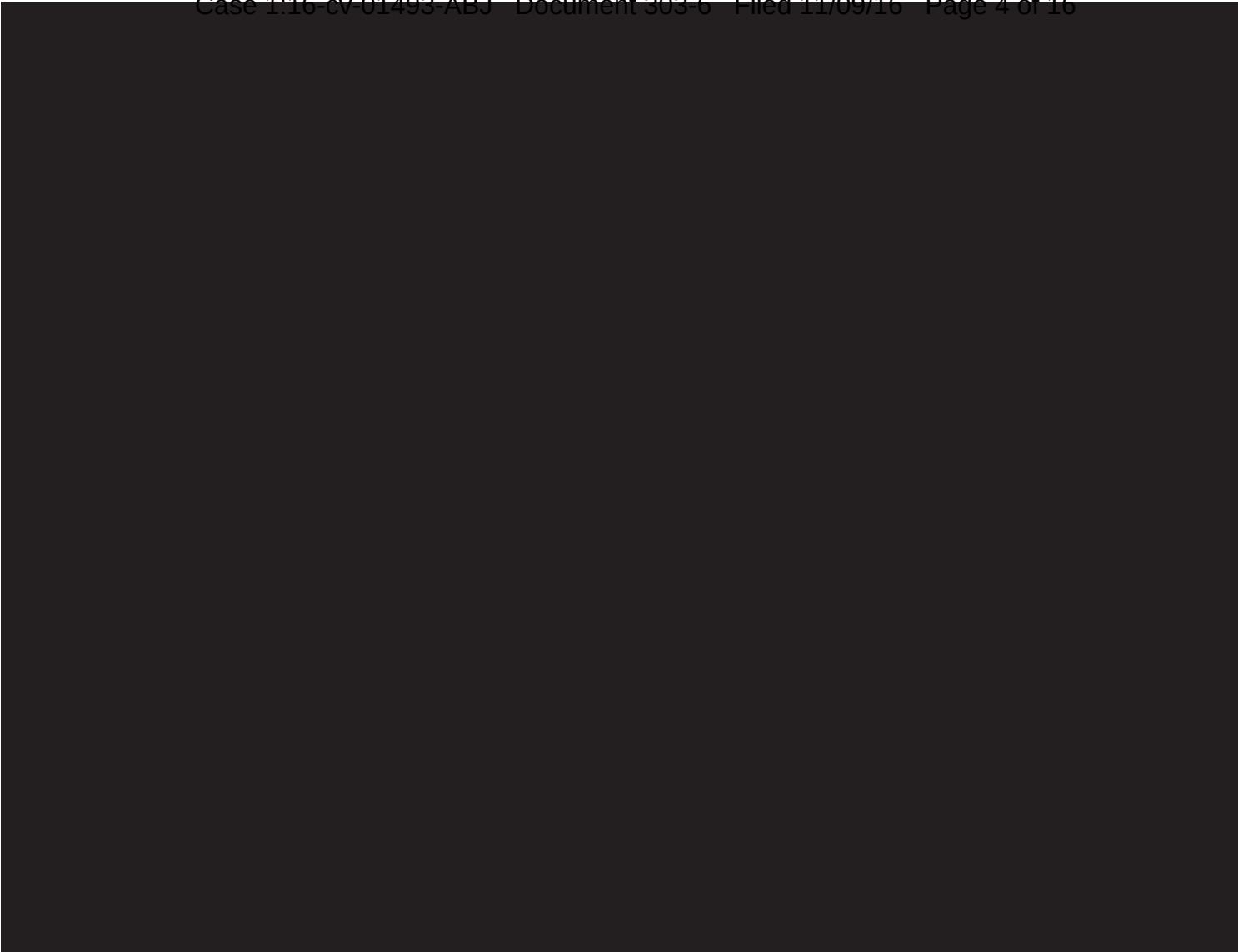
I support the proposed Anthem-Cigna merger. My statement is based on my personal knowledge and experience.

I support the Anthem/Cigna merger because:

- I believe that the combined Anthem/Cigna company will be able to offer more health care product choice than Anthem or Cigna alone could provide today.
- I expect the merger to lead to better pricing. For example, the combined Anthem/Cigna company can take advantage of the better of Anthem's or Cigna's discounts for its customers, including my company.
- I am not concerned about the merger causing prices to go up. If the combined Anthem/Cigna company raised its prices after the merger, we would be able to switch to another health insurer and receive comparable high quality insurance at competitive prices.
- I do not see the merger as limiting the options for health insurance, and I am not concerned about having my choice of health care options after the merger. There are many health insurers that offer competitive options in terms of products, provider networks, and price, among other things. I believe there will continue to be a variety of choices and competitive options after the Anthem-Cigna merger is completed.
- I also believe that my company can easily replace Anthem with other health-insurance companies (besides Cigna) that offer the same health-insurance products of the same quality and price.

Executed on June 21, 2016

[REDACTED]





From: [REDACTED]
Sent: Thursday, October 13, 2016 2:50 PM
To: Ugumori, Kohsei (CIV) <KUgumori@civ.usdoj.gov>
Cc: Comenetz, Aaron <Aaron.Comenetz@ATR.USDOJ.gov> [REDACTED]
Subject: Re: Subpoena to testify at deposition: [REDACTED]

Dear Mr. Ugumori:

I write you on behalf of [REDACTED] in relation to the above-referenced matter.

At the time of signing the declaration, [REDACTED] was not authorized to sign the declaration as a representative of [REDACTED]. Further, [REDACTED] did not appreciate the legal significance of the statements contained in the declaration. As a witness, she is not qualified to render such statements and/or opinions on behalf of [REDACTED].

Both [REDACTED] hereby request to withdraw the declaration submitted on behalf of [REDACTED] signature.

I further request that the Department of Justice withdraw the subpoena issued for the purpose of taking her deposition.

Thank you

[REDACTED]

Sent from my iPhone

On Oct 6, 2016, at 2:38 PM, Ugumori, Kohsei (CIV) <KUgumori@usdoj.gov> wrote:

IDear [REDACTED]

Thank you for agreeing to service by email. Attached please find the subpoena. If you have any questions, please don't hesitate to contact me.

Sincerely,
Kohsei

Kohsei Ugumori
Attorney
U.S. Department of Justice
450 5th Street, N.W.
Washington, D.C. 20001
Tel: 202.532.4600
E-mail: kohsei.ugumori@usdoj.gov

[REDACTED]

From: Erica Deutsch <edeutsch@bushgottlieb.com>
Sent: Friday, September 30, 2016 5:11 PM
To: Hauser, Henry <Henry.Hauser@ATR.USDOJ.GOV>
Subject: Rescindment of declaration.pdf
Attach: Rescindment of declaration.pdf; ATT00001.txt

Dear Mr. Hauser,
Please see attached. I will call you later to discuss.



September 30, 2016

Eric Brandon, Account Executive
Labor & Trust I Anthem Blue Cross of California
11030 White Rock Road
Rancho Cordova, CA 95670

Dear Mr. Brandon:

This letter serves to inform you that I am withdrawing the declaration I provided to Charles Moore dated June 24, 2016. That document does not reflect the position of the [REDACTED] or its Board of Trustees, and I was not authorized by the [REDACTED] Board of Trustees to provide the statement or to speak on behalf of the [REDACTED] or the Board. The Board of Trustees was not aware that I submitted the declaration, had not reviewed the declaration, and in fact, had no knowledge of it prior to September 27, 2016. I am also requesting that you or your counsel remove my name from the witness list in the case of *United States, et al. v. Anthem, Inc. and Cigna Corp.*, No. 1:16-cv-01493, as I have not been authorized by the [REDACTED] or the Board to speak in any representative capacity concerning the matters in the declaration or the case. Your prompt attention to this matter is appreciated.

Respectfully yours,



cc: Charles C. Moore, White and Case LLP
Erica Deutsch, Bush Gottlieb, [REDACTED] Counsel
Peter Dickinson, Bush Gottlieb [REDACTED] Counsel
Mario Martinez, Martinez Aguisolocho and Lynch, [REDACTED] Counsel

From: Fee, R. Brendan <brendan.fee@morganlewis.com>
Sent: Tuesday, October 11, 2016 5:20 PM
To: Krebs-Pilotti, Melanie <Melanie.Krebs-Pilotti@ATR.USDOJ.gov>
Subject: RE: Anthem/Cigna: [REDACTED]
Attach: Letter to MKP at DOJ.pdf

Melanie: Per our conversation, please see the attached correspondence.

R. Brendan Fee

Morgan, Lewis & Bockius LLP

1701 Market Street | Philadelphia, PA 19103-2921

Direct: +1.215.963.5136 | Main: +1.215.963.5000 | Fax: +1.215.963.5001

brendan.fee@morganlewis.com | www.morganlewis.com

Assistant: Diane M. Williams | +1.215.963.4898 | diane.williams@morganlewis.com

From: Krebs-Pilotti, Melanie [mailto:Melanie.Krebs-Pilotti@usdoj.gov]

Sent: Tuesday, October 11, 2016 10:51 AM

To: Fee, R. Brendan

Subject: RE: Anthem/Cigna: Deposition of [REDACTED]

Hi Brendan,

I should be in my office today after 4:00 pm EDT. If you call and I do not pick up, leave a message and I will call you back shortly.

Regards,

Melanie Krebs-Pilotti
U.S. Department of Justice
Antitrust Division
(202) 307-0662
melanie.krebs-pilotti@usdoj.gov

From: Fee, R. Brendan [mailto:brendan.fee@morganlewis.com]

Sent: Tuesday, October 11, 2016 8:15 AM

To: Krebs-Pilotti, Melanie

Subject: Anthem/Cigna: Deposition of [REDACTED]

Dear Melanie,

Thank you for taking the time to speak with me yesterday. As I mentioned, [REDACTED] and I are not available on October 19 for deposition, but would be available on either October 25 or 26. Before we attempt to lock a date in, however, I would like to speak with you very briefly about one of the issues we discussed yesterday, which may help us avoid a trip to Cincinnati. I am in a meeting until 3:00 pm, but please let me know if you have a few minutes to speak later in the day. Thanks very much.

Brendan

R. Brendan Fee

DOJ-EMAIL-00085999

Morgan, Lewis & Bockius LLP

1701 Market Street | Philadelphia, PA 19103-2921

Direct: +1.215.963.5136 | Main: +1.215.963.5000 | Fax: +1.215.963.5001

brendan.fee@morganlewis.com | www.morganlewis.com

Assistant: Diane M. Williams | +1.215.963.4898 | diane.williams@morganlewis.com

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Morgan Lewis

R. Brendan Fee

Partner
+1.215.963.5136
brendan.fee@morganlewis.com

October 11, 2016

VIA E-MAIL

Melanie Krebs-Pilotti, Esq.
U.S. Department of Justice Antitrust Division
450 Fifth Street NW, Suite 4100
Washington, DC 20530
melanie.krebs-pilotti@usdoj.gov

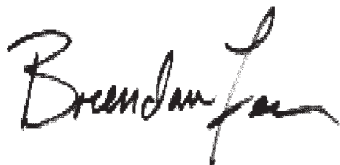
Re: United States, et al. v. Anthem, Inc. and Cigna Corp., No. 1:16-cv-01493

Dear Melanie:

As you know, I represent Ms. [REDACTED] in connection with the deposition subpoena served on her by DOJ in the above-referenced matter on October 6, 2016. Please be advised that [REDACTED] is withdrawing her declaration executed in this case on June 17, 2016. I would appreciate your confirmation that, in light of [REDACTED] withdrawal of her declaration, the subpoena issued to her is withdrawn and that the parties do not intend to take her deposition.

Thank you in advance for your courtesy.

Sincerely,



R. Brendan Fee

Morgan, Lewis & Bockius LLP

1701 Market Street
Philadelphia, PA 19103-2921
United States

 +1.215.963.5000
 +1.215.963.5001

DOJ-EMAIL-00086001

From: Kenneth W Field <kfield@jonesday.com>
Sent: Monday, October 17, 2016 11:09 AM
To: Oldfield, Sarah (ATR) <Sarah.Oldfield@ATR.USDOJ.gov>
Subject: United States. et al. v. Anthem, Inc. and Cigna Corp.
Attach: OLDFIELD_10.14.16.PDF

Dear Ms. Oldfield,
Please see the attached correspondence.

Thank you,

Ken Field
Partner
JONES DAY® - One Firm WorldwideSM
51 Louisiana Avenue, NW
Washington DC 20001-2113

Office +1.202.879.3963
kfield@jonesday.com

=====

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JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001.2113
TELEPHONE: +1.202.879.3939 • FACSIMILE: +1.202.626.1700

Direct Number: (202) 879-3963
kfield@jonesday.com

October 14, 2016

VIA EMAIL

Sarah Oldfield, Esq.
U.S. Department of Justice, Antitrust Division
450 Fifth Street, NW, Suite 4100
Washington, DC 20001
(202) 305-8915

Re: Declaration of [REDACTED] – United States, et al. v. Anthem, Inc. and Cigna Corp., No. 1:16-cv-01493

Dear Sarah:

On behalf of [REDACTED], I write to clarify the statements made by [REDACTED] Compensation and Benefits—in his June 20th, 2016, declaration provided to defendants in the above-referenced case (“[REDACTED] Declaration”). [REDACTED] did not authorize the [REDACTED] Declaration. In fact, it had no knowledge of the [REDACTED] Declaration until after its execution and submission to defendants. [REDACTED] does not support the statements contained in the [REDACTED] declaration, and it has no opinion about the impact of Anthem’s proposed acquisition of Cigna (the “Acquisition”) on competition for health insurance or consumers.

The statements in the [REDACTED] Declaration about health insurance competition (paragraphs 10 and 12), the competitive impact of the Acquisition (paragraph 11), and the Acquisition’s benefits to the public (paragraphs 2, 13, and 14) do not reflect the opinions or positions of [REDACTED]. In paragraph 10, for example, Mr. [REDACTED] states that “[f]rom a consumer standpoint, the health insurance industry is very competitive in the areas where we operate.” [REDACTED] has not investigated the competitive dynamics of the insurance industry in the areas in which it operates and therefore has no facts to support (or deny) Mr. [REDACTED] statements in paragraphs 10 and 12. Similarly, [REDACTED] has no factual basis to support Mr. [REDACTED]’s conjecture in paragraph 11 about the merged-entity’s inability to raise prices. Indeed, [REDACTED] has undertaken no analysis to investigate what impact, if any, the Acquisition would have on prices. And Mr. [REDACTED]’s statement about [REDACTED]’s ability to switch to other insurance carriers in the event of a post-Acquisition price increase is mere speculation because [REDACTED] has not encountered or analyzed this scenario. [REDACTED] also lacks sufficient facts to assess the Acquisition’s benefits to the public, and it has

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DOJ-EMAIL-00086142

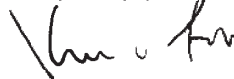
JONES DAY

Sara Oldfield, Esq.
October 14, 2016
Page 2

undertaken no efforts to investigate the validity of Mr. [REDACTED]'s statements regarding the Acquisition's purported benefits—e.g., paragraphs 2, 13 and 14.

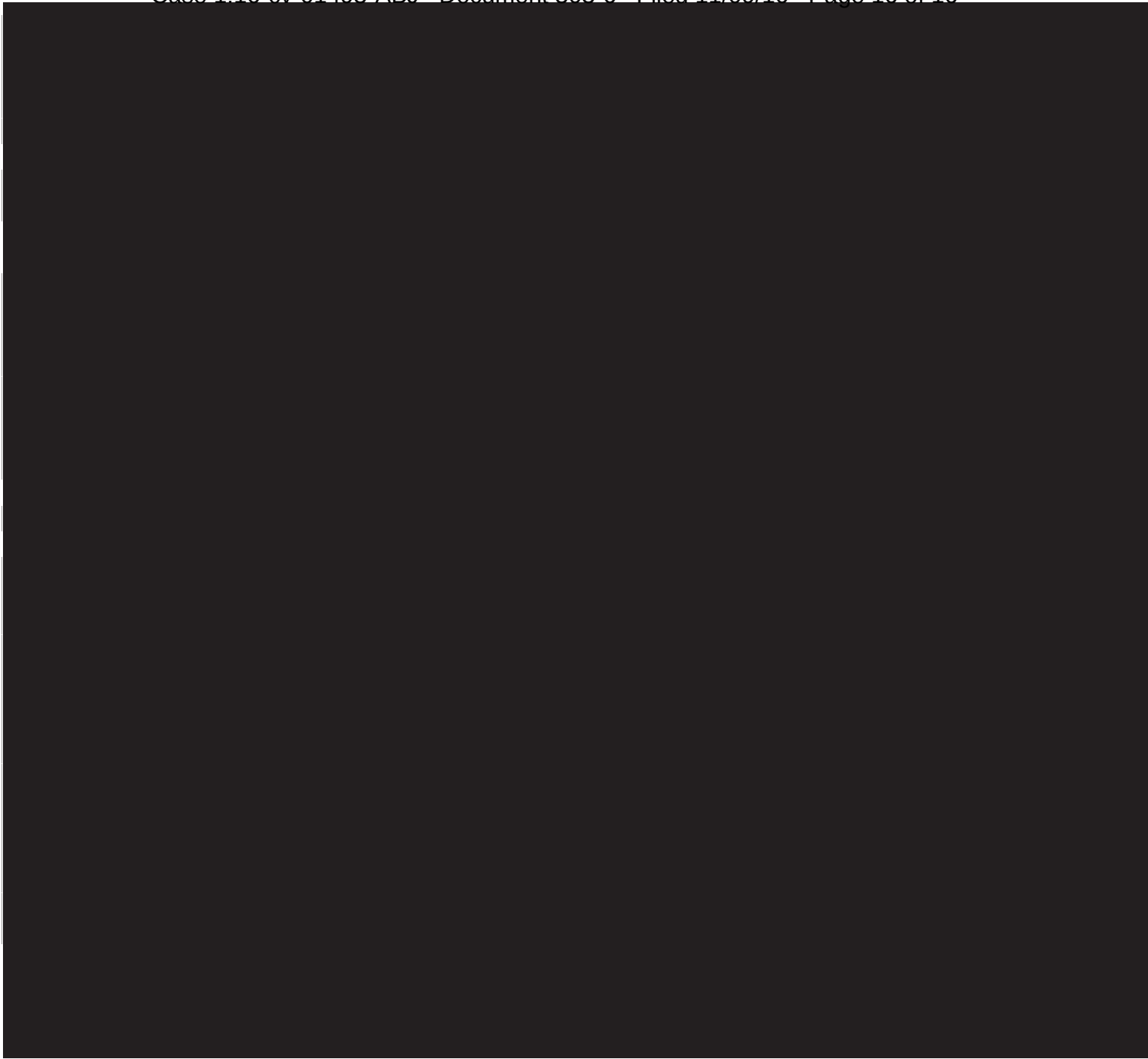
Based on the above clarifications of [REDACTED] Declaration, we believe that testimony from Mr. [REDACTED] is unnecessary because his statements are, at best, solely his personal opinions, which would be inadmissible evidence under Fed. R. Evid. 701. We therefore request that DOJ withdraw the September 15, 2016, subpoena *ad testificandum* issued to Mr. [REDACTED]

Very truly yours,



Kenneth W. Field





**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

ANTHEM, INC. and CIGNA CORP.,

Defendants.

Case No. 1:16-cv-01493 (ABJ)

[PROPOSED] ORDER

Having considered Plaintiffs' Motion *in Limine* to exclude Defendants' declarations and testimony from Defendants' expert witnesses relying upon those declarations, the Court hereby grants the Motion for the reasons set forth by Plaintiffs.

SO ORDERED.

DATE: November ____, 2016

AMY BERMAN JACKSON
United States District Judge