

ORAL ARGUMENT SCHEDULED FOR FRIDAY, MARCH 24, 2017

No. 17-5024 (L), 17-5028 (CON)

**United States Court of Appeals
for the District of Columbia Circuit**

UNITED STATES OF AMERICA, *et al.*,
Plaintiffs-Appellees,

v.

ANTHEM, INC., and CIGNA CORPORATION,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
No. 1:16-cv-01493-ABJ (The Honorable Amy Berman Jackson)

BRIEF FOR DEFENDANT-APPELLANT CIGNA CORPORATION

Charles F. Rule
PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
2001 K Street, NW
Washington, DC 20006
T: (202) 223-7300
F: (202) 223-7420

*Attorney for Defendant-Appellant
Cigna Corporation*

March 2, 2017

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), counsel for Defendant-Appellant Cigna Corporation submits this Certificate of Parties, Rulings, and Related Cases.

A. Parties

Defendants in the district court were Cigna Corporation (“Cigna”) and Anthem, Inc. (“Anthem”).

Plaintiffs in the district court and Appellees in this Court are the United States of America, the State of California, the State of Colorado, the State of Connecticut, the District of Columbia, the State of Georgia, the State of Iowa, the State of Maine, the State of Maryland, the State of New Hampshire, the State of New York, the State of Tennessee, and the Commonwealth of Virginia.

B. Rulings Under Review

References to the rulings at issue appear in the Brief for Defendant-Appellant Anthem, Inc. at i, *United States v. Anthem, Inc.*, No. 17-5024 (D.C. Cir. Feb. 13, 2017), Doc. No. 1660944.

C. Related Cases

The consolidated cases on review have not been before this Court or any other court previously, and to the best of counsel’s knowledge no cases related to these consolidated appeals are pending in this Court or in any other court.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, Defendant-Appellant Cigna Corporation states that it has no parent corporation, and that no publicly held corporation owns, directly or indirectly, 10% or more of its stock.

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PRELIMINARY STATEMENT

On July 23, 2015, Cigna Corporation (“Cigna”) and Anthem, Inc. (“Anthem”) executed a merger agreement. Pursuant to the merger agreement, Anthem is responsible for developing and leading the antitrust strategy, among other things. Anthem has filed a separate brief outlining reasons for its appeal. In accordance with the merger agreement, Cigna has appealed, and defers to Anthem. *See* Brief for Defendant-Appellant Anthem, Inc., *United States v. Anthem*, No. 17-5024 (D.C. Cir. Feb. 13, 2017), Doc. No. 1660944 (“Anthem’s Brief”).

JURISDICTIONAL STATEMENT

The district court had subject-matter jurisdiction under the Clayton Act’s Section 15 (as to the claims of the United States) and Section 16 (as to the claims of the Plaintiff States), 15 U.S.C. §§ 25–26. The district court’s Order dated and entered on February 8, 2017 (JA 198–209) adjudicated all claims, rights, and liabilities as to all parties and therefore constitutes a final judgment. Cigna filed a timely Notice of Appeal on February 17, 2017. This Court has appellate jurisdiction under 28 U.S.C. § 1291.

ISSUES PRESENTED FOR REVIEW

Anthem’s brief describes the issues it is presenting on appeal. In accordance with the merger agreement, Cigna defers to Anthem’s statement of issues. *See* Anthem’s Brief at 2.

STATUTES AND OTHER AUTHORITIES

All pertinent statutes, regulations, and other authorities are contained in the addendum to Anthem's Brief. Addendum – Statutes & Other Authorities, *United States v. Anthem, Inc.*, No. 17-5024 (D.C. Cir. Feb. 13, 2017), Doc. No. 1660945.

STATEMENT OF THE CASE

Anthem's Brief provides its Statement of the Case. In accordance with the merger agreement, Cigna defers to Anthem's Statement of the Case. *See* Anthem's Brief at 2–7.

SUMMARY OF ARGUMENT

In accordance with the merger agreement, Cigna defers to Anthem. Anthem's brief provides its Summary of Argument. *See* Anthem's Brief at 8–9.

ARGUMENT

On July 23, 2015, Cigna and Anthem executed a merger agreement. Pursuant to the merger agreement, Anthem is responsible for developing and leading the antitrust strategy, among other things. Accordingly, Anthem controlled the development and presentation to the district court of the evidence and argument supporting the legality of the merger. Cigna deferred to Anthem at trial, subject to the few instances where it was necessary for Cigna to clarify the factual record in a manner consistent with the merger agreement and its obligations to the court.

Anthem previously has filed a separate brief outlining reasons for its appeal. In accordance with the merger agreement, Cigna has appealed and defers to Anthem. *See Anthem's Brief at 10–57.*

CONCLUSION

For the foregoing reasons, Cigna defers to Anthem and to the conclusion in Anthem's brief that this Court should reverse the district court's February 8, 2017 Order in its entirety, vacate the injunction, and rule for Anthem and Cigna permitting the proposed merger of Anthem and Cigna to proceed.

Dated: March 2, 2017
Washington, D.C.

Respectfully submitted,

/s/ Charles F. Rule

Charles F. Rule
PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
2001 K Street, NW
Washington, DC 20006
T: (202) 223-7300
F: (202) 223-7420

*Attorney for Defendant-Appellant
Cigna Corporation*

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure. This brief contains 468 words (as calculated by the automatic word count function of Microsoft Word), excluding the parts of the brief exempted by Rule 32(f) of the Federal Rules of Appellate Procedure.

This brief complies with the typeface requirements of Rule 32(a)(5)(A) of the Federal Rules of Appellate Procedure and the type-style requirements of Rule 32(a)(6) of the Federal Rules of Appellate Procedure because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point, Times New Roman font.

Dated: March 2, 2017
Washington, D.C.

/s/ Charles F. Rule

Charles F. Rule
PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
2001 K Street, NW
Washington, DC 20006
T: (202) 223-7300
F: (202) 223-7420

*Attorney for Defendant-Appellant
Cigna Corporation*

CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2017, a true and correct copy of the foregoing Brief of Defendant-Appellant Cigna Corporation was electronically filed with the Clerk's Office of the U.S. Court of Appeals for the District of Columbia Circuit, and further certify that counsel for parties who are registered ECF filers will be notified of, and receive, this filing through the "Notice of Docket Activity" generated by this electronic filing.

In addition, I caused a true and correct copy to be served on the following via first class U.S. Mail:

Joseph A. Foster
Office of the Attorney General
33 Capitol Street
Concord, NH 03301

Irina Cristina Rodriguez
Office of the Attorney General, State of New York
120 Broadway
Department of Law, 26th Floor
New York, NY 10271-0000

Abigail Leah Smith
Colorado Department of Law
Natural Resources & Environment Section
1300 Broadway
Denver, CO 80203

Pursuant to Circuit Rule 31(b), an original and eight copies of the Brief of Defendant-Appellant Cigna Corporation were also hand-delivered to the Clerk's Office of the U.S. Court of Appeals for the District of Columbia Circuit.

/s/ Charles F. Rule

Charles F. Rule

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP

2001 K Street, NW

Washington, DC 20006

T: (202) 223-7300

F: (202) 223-7420

*Attorney for Defendant-Appellant
Cigna Corporation*