



STATE OF CONNECTICUT
SENATE
STATE CAPITOL
HARTFORD, CONNECTICUT 06106-1591
SENATE REPUBLICAN OFFICES

July 20, 2016

Legal Division
Connecticut Office of State Ethics
18-20 Trinity Street, 2nd Floor
Hartford, CT 06106

Re: Proposed Declaratory Ruling No. 2016-A

Thank you for granting the Common Cause Petition for a Declaratory Ruling as to whether Insurance Commissioner Katherine Wade's participation in the Anthem –Cigna merger constitutes a violation of the State Code of Ethics. Please accept the following as our public comment for the record.

Position:

Commissioner Wade has a substantial conflict of interest because her decision to grant or deny Anthem's application to acquire Cigna can reasonably be expected to have a direct monetary impact on her and her husband, who is a current Cigna high-level employee and stockholder. As a result, any participation in the application proceedings by the Commissioner constitutes a violation of the State Code of Ethics.

Background:

On September 22, 2015, Anthem filed an application with the Connecticut Insurance Department to acquire control of Cigna, a Connecticut health insurance company. This \$48 billion merger, if approved, will result in the nation's largest health insurance company.

Pursuant to the buyout agreement, Anthem will pay Cigna stockholders \$188 per share in cash and stock. This represents a 38% premium over Cigna's stock price at the end of May 2015, before news of a possible Anthem merger became public. Since January 1, 2016, and while the application has been pending, Cigna's stock price has ranged between \$122 and \$146 a share, or 22% to 35% below Anthem's stock offer.¹

Under the Connecticut Holding Company Act, the Insurance Commissioner is charged with safeguarding the financial security of Connecticut insurance companies and empowered to supervise the activities of such

¹ <https://www.programbusiness.com/News/Major-Merger-Is-On-Anthem-Cigna-Strike-484-Billion-Agreement>;
http://www.nytimes.com/2015/07/25/business/dealbook/anthem-cigna-health-insurance-deal.html?nlid=983152&_r=0; ;
See also attached stock chart.

companies. (C.G.S. Sec. 38a-129(a)) Her powers include the authority to review and approve any proposed acquisition of a Connecticut insurer. No person may merge with or acquire a Connecticut insurance company, unless such person has filed an application with the Commissioner and such merger or acquisition "has been approved by the Commissioner." (C.G.S. Sec 38a-130(a)(2)) Any public hearing on the application is to be "held by the Commissioner" who is required to give notice of such hearing. (C.G.S. Sec 38a-132(b)(1))

The information to be considered by the Commissioner includes: (1) the nature and amount of consideration (i.e. cash, stock or other things of value) to be exchanged for control of Cigna; (2) anticipated changes in Cigna's corporate structure or management post acquisition; (3) any plans to consolidate, merge or liquidate Cigna post acquisition; (4) the fairness of Anthem's offer to buy Cigna stock; and (5) all other agreements relating to Cigna stock. (C.G.S. Sec 38a-130(b)(1))

The Commissioner has broad authority to deny an application. For example, she may deny the application if she finds that any of Anthem's post acquisition plans for Cigna, including plans to liquidate, consolidate or merge functions or "make any other material change in its business or corporate structure" are "not in the public interest." (C.G.S. Sec. 38a-132(a))

Thus, Commissioner Wade has sole statutory authority to receive, review and approve or deny Anthem's application to acquire Cigna.

Commissioner Wade was a Cigna employee for over twenty years. During that time, she served as Vice President and was responsible for overseeing Cigna's lobbying activities across the country. Her husband, Michael Wade, is currently employed at Cigna as Associate Chief Counsel. Over the years, his compensation or retirement benefit has included Cigna stock and/or stock options.

On February 25, 2016, during the pendency of the Anthem application to acquire Cigna, Commissioner Wade sought approval from the Office of State Ethics to sell certain of her husband's Cigna stock and stock options set to vest between February 25, 2016 and March 2, 2016. The Commissioner argued that such divestiture would not pose a conflict because "presently, there are no Cigna matters before me" and the Anthem application was, at that time, being reviewed by staff. Previously, the Commissioner also argued that she did not have a conflict of interest and could act on the Anthem application because any Cigna stock held by her husband would be put in a blind trust as soon as it vested.

Conflict of Interest Statute

The conflict of interest provision of Connecticut's State Code of Ethics prohibits a public official from taking any "official action" if he or she has reason to believe or expect that such action would have a direct financial impact on such official, *a spouse*, a dependent child or a business with which such official is associated. (C.G.S. Sec. 1-85)

1. The application, while filed by Anthem, clearly, directly and on its face requires the Commissioner to take "official action" impacting Cigna, its employees and stock holders, such as Michael Wade.

The Commissioner has repeatedly stated that she "does not have a Cigna matter before her." This statement is legally irrelevant, factually incorrect and completely disingenuous. The statute does not speak to "matters" but to "official action." Absent a recusal, the Commissioner has the sole statutory authority to review and decide (i.e. take official action on) Anthem's application to acquire Cigna. That application, offering \$48 billion and \$188 a share to buy Cigna, merge it with Illinois based Anthem, and terminate Cigna's existence as an

independent Connecticut based company, clearly and on its face has a direct impact on Cigna, its employees and shareholders. To claim otherwise is an absurd elevation of form over substance. Any reasonable person looking at the facts would conclude that the Commissioner's "official action" in approving or denying the application will significantly impact Cigna, its employees and shareholders, including her husband, Michael Wade.

In addition, the entire legal basis for the Commissioner's authority in this matter is the fact that it involves the control of a Connecticut insurance company, i.e. Cigna. It is her statutory authority over Cigna that gives her broad power to review and rule on Anthem's application. The fact that Anthem, as the acquirer, filed the application is irrelevant when the entire focus of her review and inquiry will be the impact of the acquisition on Cigna, including its employees, shareholders and policyholders.

2. Given the Commissioner's specific and exclusive statutory authority to review and decide the application to acquire Cigna, she cannot avoid the conflict of interest statute simply by delegating certain interim administrative functions to staff.

In her February 25, 2016 letter to the Office of State Ethics supporting her decision to sell certain of her husband's Cigna stock during the pendency of the application, Commissioner Wade attempted to distance herself from the application process by pointing out that the application was, at that particular time, being reviewed by staff. However, the statute is clear. It is the Commissioner who has sole authority to receive, review and decide the application to acquire Cigna. While certain administrative functions may be delegated to staff, the ultimate decision making power and responsibility belongs to the Commissioner. The conflict of interest statute is intended to ensure that such power is exercised solely in the public interest and is not corrupted by personal interests. Once a conflict of interest exists, the Commissioner must recuse herself. She cannot attempt to circumvent the code of ethics through selective delegation of administrative functions while still reserving the ultimate decision making authority for herself.

3. The Commissioner will be required to review and possibly negotiate aspects of the application directly impacting Cigna employees such as Michael Wade.

Pursuant to the Holding Company Act, the issues to be reviewed by the Commissioner include Anthem's plans to change Cigna's corporate or management structure, consolidate or merge corporate or management functions, or even liquidate the company entirely. Whether Anthem will close Cigna's Connecticut offices, merge management or administrative functions, such as her husband's law department, or take other actions directly impacting her husband's job is part of her review. She has a statutory obligation to protect the financial security of Cigna and ensure that the terms of the acquisition are fair and in Connecticut's public interest. Any comment or negotiation by her on such terms could directly impact her husband's employment, while any failure to do so could be an abdication of her statutory duty, posing an untenable conflict.

4. The Commissioner's decision to approve or deny the application will directly impact her husband's financial condition as a stockholder.

One of the Commissioner's primary responsibilities is to review Anthem's Cigna stock buyout proposal. The Commissioner's husband has received Cigna stock as part of his compensation or retirement benefit. According to the Commissioner's February 25, 2016 email to the Office of State Ethics, some of that stock vested during the Commissioner's consideration of the application. It is our understanding that vested stock has been put in a blind trust.

Anthem's proposal to acquire Cigna includes a stock offer of \$188 per share to be paid to Cigna stockholders in a combination of cash and Anthem stock. This represents a premium of between 22% and 35% above Cigna's year to date stock value. Thus, the Commissioner's decision on the application will have a substantial, immediate and direct impact on the value of Michael Wade's stock.

5. Under the circumstances of this case, placing the stock in a blind trust is an insufficient remedy for this obvious and direct conflict.

This case is distinguishable from the former State Ethics Commission's Advisory Opinion 96-24 involving then Insurance Commissioner George Reider. In that case, (1) neither Commissioner Reider nor any member of his immediate family was employed by Aetna, and (2) as noted by the Commission, the proposed acquisition was an asset purchase with no established stock buyout price or value. Thus, (1) no immediate family member was likely to be directly impacted by the acquisition as a high-level employee, (2) the Commissioner's review would not involve a review of post acquisition plans directly impacting such employment, and (3) any impact on stock value was attenuated and indirect.

In this case, approval of the application by the Commissioner will have an immediate and direct impact on Cigna stock value. At \$188 a share, Anthem's offer is 22% to 35% above Cigna's recent trading stock value. If approved, Cigna stockholders will realize a significant financial gain due to this stock price premium. Placing the stock in a blind trust, while protecting against the prospect of the Commissioner or her husband timing trades of the stock based on confidential information, does not eliminate the obvious conflict created by the fact that action on the application will directly and immediately impact the value of the stock in that trust.²

Furthermore, even in the Reider case, the Commission noted that it would pose a substantial conflict if the Commissioner's stock were to vest during the pendency of, or soon after his decision on, the application. Ultimately, Commissioner Reider decided to recuse himself from the proceeding. It is our understanding that some of Michael Wade's stock vested and was sold during the pendency of the application. The Commissioner argued that this was not a conflict because there were "no Cigna matters before me". However, as previously pointed out, this argument is legally and factually erroneous. She clearly had an application before her that required official action directly impacting Cigna, its employees and stockholders.

Because the application requires the Commissioner to (1) review Anthem's plans for Cigna's organization, governance and management, including possible plans to eliminate or consolidate offices and positions such as her husband's, and (2) approve the Cigna stock buyout terms including a substantial stock price premium directly benefiting Cigna stockholders such as her husband, Commissioner Wade has a current, live, ongoing and substantial conflict of interest that did not exist in the Reider case and should not participate in the proceedings.

² Under the facts of this case, once Cigna stock was placed in the trust, no trustee would or could, consistent with his or her fiduciary duty, divest that stock, not with an impending transaction that could raise its value by over 30%. Thus, there is no "blindness" here. The Commissioner knows that Cigna stock was put in the trust and no trustee could sell that stock under these circumstances without risking a violation of his or her fiduciary duty to manage the assets of the trust and maximize its value. In this case, a "blind trust" is both an insufficient and illusory remedy. Even if a blind trust were a sufficient remedy in this case, which it is not, there has been insufficient disclosure of the terms of that trust to ensure its effectiveness. We do not know, for example, who is serving as trustee. Is it a family member? We do not know the scope of the trustee's authority. We do not know the term of the trust. To our knowledge the Commissioner has never produced the trust documents or disclosed this information. Without this information it is impossible to know whether the operation of the trust is truly "blind" and sufficient to eliminate an otherwise substantial conflict of interest.


6. The impact on Michael Wade as a high level management employee and stock holder is distinct

This case is not similar to a legislator, whose spouse works for Cigna, voting on general insurance legislation. The application does not impact all insurance companies generally but instead directly, significantly and uniquely impacts Cigna, its employees and shareholders. The Commissioner is not one of 151 part time legislators, but a highly paid executive official with sole statutory authority to approve or deny the application. In the course of that decision, she will have the authority to review and decide upon matters directly impacting Cigna's management structure, corporate governance, and stock value. These decisions will directly impact her husband's financial condition as a high level employee and stock holder.

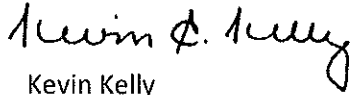
For all of the above reasons, Commissioner Wade has a substantial conflict of interest. Any participation in the application proceedings on her part constitutes a violation of the State Code of Ethics.

Thank you for your time and attention to this important matter.


Sincerely,



Len Fasano
Senate Minority Leader



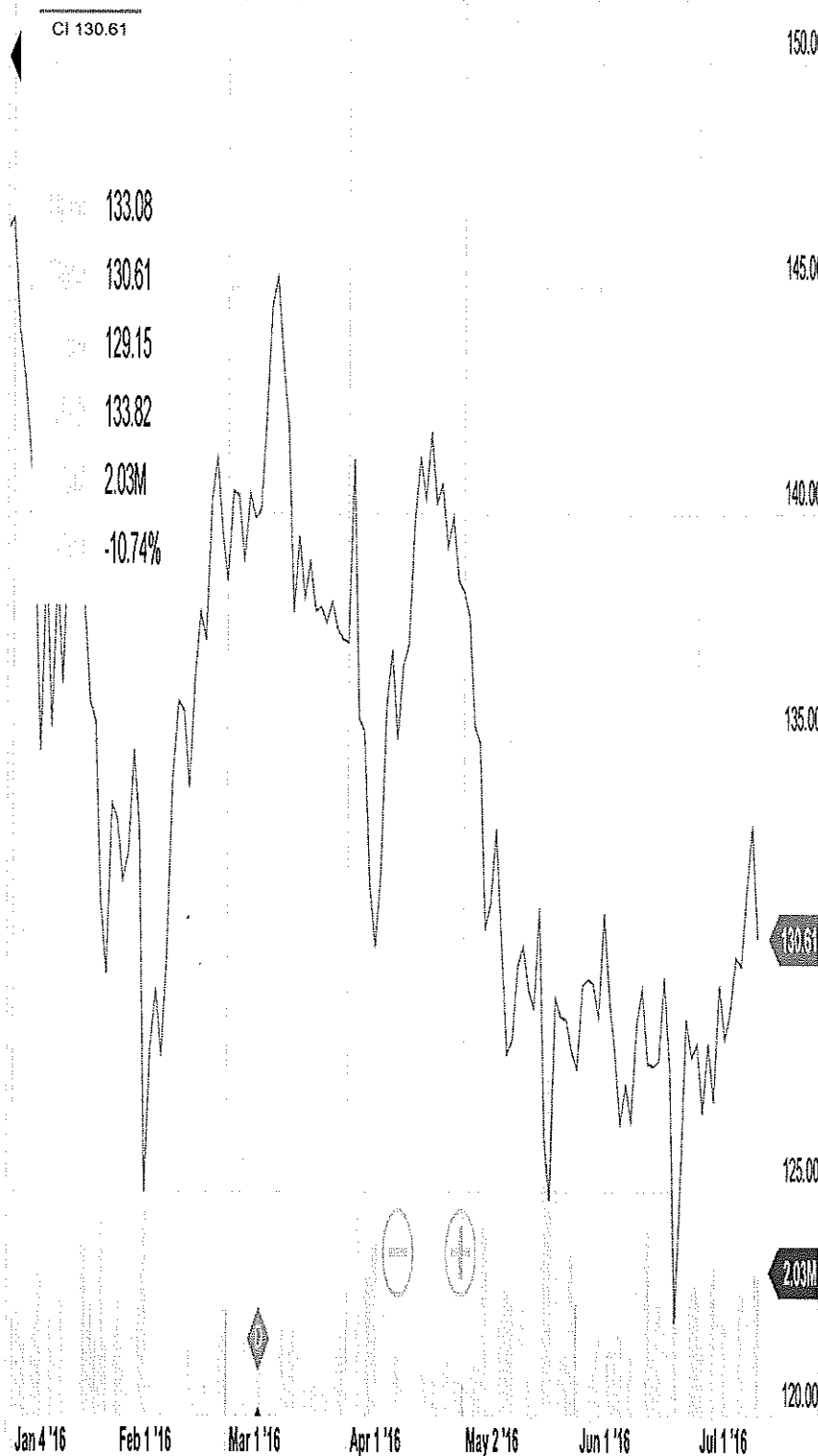
Kevin Kelly
State Senator – 21st District



Michael McLachlan
State Senator – 24th District

Cigna Corp. (CI) 130.61 -2.52 (-1.89 %) As of 2:03 PM EDT, NYSE Real Time Price. Market open.

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Symbol	Last Price	Change	% Change
CI	130.61	-2.52	-1.89 %
Cigna Corporation Common Stock			

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Symbol	Last Price	Change	% Change
NFLX	85.25	-13.56	-13.72 %
Netflix, Inc.			
NTDOY	35.74	-1.62	-4.35 %
NINTENDO CO LTD ADR			
LMT	257.44	1.15	0.45 %
Lockheed Martin Corporation Com			
OUSA	28.22	-0.04	-0.15 %
O'Shares FTSE U.S. Quality Divi			
HDSN	5.03	1.24	32.72 %
Hudson Technologies, Inc.			

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Symbol	Last Price	Change	% Change
BAC	14.26	0.15	1.03 %
Bank of America Corporation Com			
NFLX	85.25	-13.56	-13.72 %
Netflix, Inc.			
SIRI	4.18	0.01	0.24 %