

UNITED STATES DIDTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION
AT CINCINNATI

RONALD D. MELL, SR., THE ESTATE OF)
FRIEDA M. WILMES, ROBERT K. ESPEL)
and JAMES C. MATACIA,)

CASE NO. 1:08-cv-00715

JUDGE

On Behalf of Themselves and)
All Others Similarly Situated,)

Plaintiffs,)

vs.)

CLASS ACTION COMPLAINT FOR
MONEY DAMAGES AND
EQUITABLE RELIEF

CITY OF CINCINNATI, OHIO; LAKETA)
COLE, MINETTE COOPER, JOHN CRANLEY,)
DAVID CROWLEY, PAT DeWINE, CHRIS)
MONZEL, DAVID PEPPER, ALICIA REECE,)
and JAMES R. TARBELL, former members of)
Cincinnati City Council, and their respective)
successors in office; HON. CHARLIE LUKEN,)
former mayor of Cincinnati, and his successor in)
office; ANTHEM, INC., n/k/a WELLPOINT,)
INC.; ANTHEM INSURANCE COMPANIES,)
INC.; and COMMUNITY INSURANCE)
COMPANY, f/k/a COMMUNITY MUTUAL)
INSURANCE COMPANY,)

(Jury Demand Endorsed Hereon)

Defendants.)

Plaintiffs, Ronald D. Mell, Sr. (“Mell”), the Estate of Frieda M. Wilmes (“Wilmes”), Robert K. Espel (“Espel”) and James C. Matacia (“Matacia”), on behalf of themselves and a class of all other similarly-situated individuals named as insureds, or who were members of a group of persons named as insureds, under a fully-insured group health insurance policy or policies maintained by the City of Cincinnati, Ohio (the “City”) with Community Mutual Insurance Company (“CMIC”) and its successors-in-interest, Anthem Insurance Companies, Inc. (“Anthem Insurance”) and Community Insurance Company (“CIC”), and in force from time-to-time from January 1, 1990 through November 2, 2001, inclusive (collectively the “Group Policy”), for their Class Action Complaint

seeking compensatory and punitive damages and equitable relief against Defendants (i) the City; (ii) Laketa Cole, Minette Cooper, John Cranley, David Crowley, Pat DeWine, Chris Monzel, David Pepper, Alicia Reece and James R. Tarbell, in their official and individual capacities as members of the Cincinnati City Council, together with their respective successors in office, if any (collectively referred to as the “City Council Members”); (iii) the Honorable Charlie Luken, former Mayor of the City of Cincinnati, Ohio, together with his successor in office (the “Mayor”) (the City, the City Council Members and the Mayor are sometimes collectively referred to as the “City Defendants”); and (iv) Anthem Inc., now known as WellPoint, Inc. (“Anthem”), Anthem Insurance and CIC (collectively referred to as the “Anthem Defendants”), and each of them, jointly and severally, hereby claim, allege, state and aver as follows:

NATURE OF ACTION, JURISDICTION AND VENUE

1. This is a class action brought under the Court’s diversity jurisdiction as expanded by the Class Action Fairness Act of 2005, asserting state common law claims for breaches of multiple contracts, conversion and misappropriation, aiding and abetting conversion and misappropriation, breach of fiduciary duties, breach of agency agreement and fraudulent concealment, and seeking compensatory and punitive damages and other appropriate relief.

2. The Plaintiff Class consists of individuals who were named as insured persons covered under the Group Policy, or who were members of a named group of insured persons covered under the Group Policy during the relevant period of time. This action seeks to recover the value of 870,021 shares of Anthem common stock that should have been paid to the Plaintiff Class as demutualization compensation in 2001 upon the conversion of Anthem Insurance from a mutual company to a stock corporation in a process referred to as a demutualization. The demutualization compensation consisting of 870,021 Anthem shares was improperly paid to and kept by the City of Cincinnati instead.

3. This Court had diversity jurisdiction over the subject matter of the foregoing state law claims asserted in this class action, pursuant to the provisions of 28 U.S.C. Sec. 1332(d)(2), because the parties are citizens of diverse states and the amount in controversy, aggregating the claims of all class members, exceeds the sum of \$5,000,000. The Named Plaintiffs are citizens of Ohio, and the unnamed class members in the Class are citizens of Ohio and other states. Defendants are citizens of Ohio and Indiana for purposes of 28 U.S.C. Sec. 1332(c)(1). Thus, one or more of the Named Plaintiffs (and one or more of the unnamed class members) are citizens of a state different from at least one of the Defendants.

4. This Court also has supplemental jurisdiction, pursuant to the provisions of 28 U.S.C. Sec. 1367(a), over any claims that are so related to the claims asserted under the Court's federal diversity jurisdiction that they form part of the same case or controversy within the meaning of Article III of the Constitution of the United States.

5. Venue is properly laid over the foregoing diversity claims within the Southern District of Ohio, pursuant to 28 U.S.C. Sec. 1391(a)(1), because all Defendants reside for venue purposes in Ohio, and at least one Defendant resides for venue purposes, within the meaning of 28 U.S.C. Sec. 1391(c), in this judicial district.

THE PARTIES

6. Mell is an individual residing at 2786 Craneschoolhouse Road, Bethel, Clermont County, Ohio 45106. Mell was employed by the City in its Public Utilities & Facilities Management Department continuously from a date prior to January 1, 1990, through the date he retired in 1993, inclusive. While actively employed by the City, Mell participated in and was insured by the fully-insured Health Maintenance Plan ("HMP") that the City maintained for its active employees. During his retirement, and at all relevant times, Mell has been a participant in and has been insured by the fully-insured HMP that the City maintained for its retirees. Thus, at all relevant times Mell

was a named insured, or was included in the group of persons named as insureds, under the Group Policy maintained by the City initially with CMIC and subsequently with Anthem/CIC.

7. At the time of her death on or about July 25, 2008, Wilmes was an individual residing in Cincinnati, Hamilton County, Ohio. Claudette Schenck, the Executrix of Wilmes Estate, resides at 4510 Forest Avenue, Cincinnati, Ohio 45212. Wilmes was the surviving spouse of William H. Wilmes, a retired City employee who worked at the Metropolitan Sewer District for many years until his retirement in 1984. From January 1, 1990 through the date of his death in 1994, inclusive, Mr. Wilmes was the named insured participating in the fully-insured HMP for City retirees. At all times from her husband's death in 1994 (a date prior to September 30, 1995) through November 2, 2001, inclusive, and continuing thereafter through the date of her own death on or about July 25, 2008, inclusive, Wilmes participated in and was insured by the fully-insured HMP covering the City's retirees. Thus, at all relevant times, Wilmes was a named insured, or was included in the group of persons named as insureds, under the Group Policy maintained by the City initially with CMIC and subsequently with Anthem/CIC.

8. On information and belief, at all relevant times, specifically including without limitation the period from a date prior to September 30, 1995 through November 2, 2001, inclusive, and continuing through the date of the filing of this Complaint, inclusive, Mell has been a named insured (or part of a group of persons named as insureds) participating in and insured by the fully-insured HMP for retirees identified by the employee Group Identification number ("GID") H17955-010.

9. On information and belief, at all relevant times, specifically including without limitation the period from a date prior to October 1, 1995 through November 2, 2001, inclusive, and continuing thereafter through the date of her death on or about July 25, 2008, inclusive, Wilmes was a named insured (or part of a group of persons named as insureds) participating in and insured by the

fully-insured HMP for retirees identified by the GID H17955-010.

10. Espel is an individual residing at 4980 Jessup Road, Cincinnati, Hamilton County, Ohio 45247. Espel was actively employed by the City's Fire Department as a firefighter continuously from a date prior to January 1, 1990 through the date he retired in 2006, inclusive. During the period of time from January 1, 1990 through November 2, 2001, inclusive, Espel participated in and was insured by the fully-insured dental plan covering the City's firefighters. Thus, at all relevant times, Espel has been a named insured, or has been included in the group of persons named as insureds, under the Group Policy maintained by the City initially with CMIC and subsequently with Anthem/CIC.

11. Matacia is an individual residing at 605 Greyleaf Court, Cleves, Hamilton County, Ohio 45002. Matacia was actively employed by the City's Fire Department as a firefighter continuously from a date prior to January 1, 1990 through the date he retired in September 2002, inclusive. During the period of time from January 1, 1990 through November 2, 2001, inclusive, Matacia participated in and was insured by the fully-insured dental plan covering the City's firefighters. Thus, at all relevant times, Matacia has been a named insured, or has been included in the group of persons named as insureds, under the Group Policy maintained by the City initially with CMIC and subsequently with Anthem/CIC.

12. On information and belief, at all relevant times, specifically including without limitation the period from January 1, 1990 through November 2, 2001, inclusive, Espel and Matacia were members of the City's employee group receiving the benefits of the fully-insured dental plan for firefighters identified for purposes of health, medical and "non-medical" insurance benefits by GID number H25993-017.

13. The City is a municipal corporation organized under Article XVIII of the Ohio Constitution.

14. The City Council Members are sued herein in their respective official and individual capacities as members of the City Council of Cincinnati, Ohio, at the time of the relevant events set forth below. The City Council Members' respective successors in office are included for all purposes herein in their respective official and individual capacities.

15. The Mayor is sued herein in his official and individual capacities as the City's mayor. At the time of the relevant events set forth below, the Mayor was the Honorable Charlie Luken. The Mayor's successor in office is included for all purposes herein in his official and individual capacities.

16. Anthem is a corporation organized under the laws of the State of Indiana and has its principal place of business in Indianapolis, Indiana. Anthem is the parent company of Anthem Insurance and CIC.

17. Anthem Insurance is a corporation organized under the laws of the State of Indiana and has its principal place of business in Indianapolis, Indiana. Anthem Insurance was formerly known as Associated Insurance Companies, Inc. ("Associated"), and is a wholly-owned subsidiary of Anthem.

18. CIC is a corporation organized under the laws of the State of Ohio and has its principal place of business in Cincinnati, Ohio. CMIC was a mutual insurance company domiciled in Ohio that had its principal place of business in Cincinnati, Ohio. Effective October 1, 1995, CMIC merged into Anthem Insurance (the "Merger") and went out of separate existence, and CIC was incorporated as a wholly-owned subsidiary of Anthem Insurance.

CLASS DEFINITION

19. The members of the Class are individual active and retired employees of the City, or their surviving spouses, who were named as the insured persons (or who were members of the group of persons named as insureds) continuously from June 18, 2001 through November 2, 2001,

inclusive, under a fully-insured Group Policy which was issued either:

- (a) by CMIC and in force immediately prior to CMIC's merger with Anthem Insurance (effective on October 1, 1995), which coverage then continued in effect post-merger through November 2, 2001, inclusive, under a Group Guaranty Policy issued by Anthem Insurance/CIC, and specifically including without limitation:
 - (i) the City retirees who were covered for medical benefits by the fully-insured Retirement HMP, identified by GID number H17955-010, at any time from January 1, 1990 through June 30, 2000, inclusive, and whose coverage continued uninterrupted thereafter at least through November 2, 2001, and
 - (ii) the members of the City Fire Department who were covered for dental benefits by the fully-insured Dental Plan for firefighters, identified by GID number H25993-017, at any time from January 1, 1990 through June 30, 2000, inclusive, and whose coverage continued uninterrupted thereafter at least through November 2, 2001;

or

- (b) by Anthem Insurance/CIC as part of new full-insurance group coverage begun at any time from October 1, 1995 through June 30, 2000, inclusive, which continued in effect through November 2, 2001, inclusive, and specifically including without limitation:
 - (i) the City employees enrolled in the firefighters' Community Preferred Health Plan (CPHP), identified by GID number H25993-008, who were covered by the fully-insured Human Organ Transplant (HOT)

rider at any time from January 1, 1998 through June 30, 2000, inclusive, and whose coverage continued uninterrupted thereafter at least through November 2, 2001,

- (ii) the City employees enrolled in the Management CPHP, identified by GID number H25993-013, who were covered by the fully-insured HOT rider at any time from January 1, 1998 through June 30, 2000, inclusive, and whose coverage continued uninterrupted thereafter at least through November 2, 2001, and
- (iii) the City employees enrolled in the AFSCME CPHP, identified by GID number H25993-018, who were covered by the fully-insured HOT rider at any time from January 1, 1998 through June 30, 2000, inclusive, and whose coverage continued uninterrupted thereafter at least through November 2, 2001,

but excluding therefrom:

- (i) Defendants, and each of them, and their respective successors and assigns;
- (ii) the elected officials of the City holding office at any time during the period from June 18, 2001 through November 2, 2001, inclusive, and thereafter, and their respective parents, spouses and children;
- (iii) the executive officers and directors of Anthem, Anthem Insurance and CIC, together with their predecessors and successors, and their respective parents, spouses and children;
- (iv) counsel of record in this action and their respective parents, spouses and children; and
- (v) any judicial officer who enters an order in this action, and their respective

parents, spouses and children.

20. The period of time from January 1, 1990 through June 30, 2000, inclusive, was the time frame used by Anthem, Anthem Insurance and their actuarial advisers to calculate the number of Anthem shares allocable and payable as compensation for the demutualization with respect to the Group Policy (the “Actuarial Period”). This calculation allocated approximately 870,021 shares of Anthem common stock to the Group Policy.

21. The named Plaintiffs and the other Class members were legally entitled to and had ownership rights to approximately 870,021 shares of Anthem common stock issued with respect to the Group Policy. In late December 2001, Anthem issued the common stock after Anthem Insurance demutualized and converted from a mutual insurance company to a stock company on November 2, 2001.

22. Instead of distributing the approximately 870,021 shares to and among the Class members, as was required, Anthem issued all the shares to the City instead. After receipt of the approximately 870,021 Anthem shares, the City (i) sold all of the shares during the period from February 2002 through April 2002, inclusive, (ii) wrongfully claimed entitlement to and ownership of the net proceeds from the sale of the Anthem stock of approximately \$54,761,000, or \$62.94 per share, and (iii) retained all of such net sales proceeds and spent the net sales proceeds primarily to finance certain neighborhood development projects chosen by City Council.

23. None of the net sales proceeds was distributed by the City to and among the Class members, nor were the proceeds transferred by the City to the Cincinnati Retirement System (“CRS”) for the benefit of the Class members.

24. This action asserts damage claims for (i) breaches of multiple contracts, (ii) breach of fiduciary duty, (iii) aiding and abetting breach of fiduciary duty, (iv) breach of agency agreement, (v) conversion, (vi) aiding and abetting conversion, and (vii) concealment, fraud and constructive

fraud, and seeks recovery of the full value of approximately 870,021 shares of Anthem common stock together with any accrued share appreciation or interest computed on the \$54.76 million in sales proceeds, and the costs and expenses of this action including reasonable attorneys' fees.

CLASS ACTION ALLEGATIONS

25. Mell, Wilmes, Espel and Matacia bring this class action, pursuant to Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of the Class defined in Paragraph Nineteen (19) above.

26. The City had a fully-insured Group Policy from Anthem Insurance covering and providing group benefits to part of its work force continuously from June 18, 2001 through November 2, 2001, inclusive, that had formerly been provided by CMIC and was in effect immediately prior to the Merger, consisting of the fully-insured Dental Plan for firefighters.

27. On information and belief, from June 18, 2001 through November 2, 2001, inclusive, there were approximately 85 firefighters enrolled in GID number H25993-017 who were covered by the fully-insured Dental Plan.

28. The City also had another fully-insured Group Policy covering and providing group benefits to a portion of its retired work force continuously from June 18, 2001 through November 2, 2001, inclusive, that either (i) had formerly been provided by CMIC and was in effect immediately prior to the Merger, or (ii) was new full-insurance group coverage begun by entering into a new Group Policy after October 1, 1995 but before June 30, 2000. This fully-insured coverage consisted of the Retirement HMP for the City's retirees.

29. On information and belief, from June 18, 2001 through November 2, 2001, inclusive, there were approximately 950 retirees enrolled in GID number H17955-010 who were covered by the fully-insured Retirement HMP.

30. The City also had a fully-insured Group Policy covering and providing group benefits

to part of its employee work force continuously from June 18, 2001 through November 2, 2001, inclusive, that consisted of new full-insurance group coverage begun after October 1, 1995 but before June 30, 2000. Effective January 1, 1998, the City provided the benefits of a fully-insured HOT rider covering the costs of human organ and tissue transplants to its active employees enrolled in (i) the firefighters' CPHP, (ii) the management CPHP, and (iii) the AFSCME union CPHP.

31. On information and belief, continuously from June 18, 2001 through November 2, 2001, inclusive, there were approximately:

- (i) 269 employees enrolled in the firefighters' CPHP, identified by GID number H25993-008, who were covered by the HOT rider;
- (ii) 532 employees enrolled in the management CPHP, identified by GID number H25993-013, who were covered by the HOT rider; and
- (iii) 624 employees enrolled in the AFSCME union CPHP, identified by GID number H25993-018, who were covered by the HOT rider.

32. Mell, Wilmes, Espel and Matacia are members of the Class they seek to represent.

33. In particular, from a date prior to September 30, 1995 through November 2, 2001, inclusive, Mell was a named insured under the City's Group Policy as a member of and participant in an insured group of persons with GID number H17955-010 and covered by the fully-insured Retirement HMP.

34. In particular, from a date prior to October 1, 1995 through November 2, 2001, inclusive, Wilmes was a named insured under the City's Group Policy as a member of and participant in an insured group of persons with GID number H17955-010 and covered by the fully-insured Retirement HMP.

35. In particular, from January 1, 1990 through November 2, 2001, inclusive, Espel and Matacia were named insureds under the City's Group Policy as members of and participants in an

insured group of persons with GID number H25993-017 who were covered by the fully-insured firefighters' Dental Plan.

36. The members of the Class are so numerous that joinder of all members is impracticable, as required by Rule 23(a)(1) of the Federal Rules of Civil Procedure. While the exact number and identity of all Class members is unknown to Plaintiffs at the present time, that information is identifiable and will be ascertained through appropriate discovery. On information and belief, there were well over 1,000 individuals insured under the Group Policy at all times relevant to this class action. Therefore, Plaintiffs allege on information and belief that the Class consists of more than 1,000 persons.

37. There are questions of law or fact common to all members of the Class in satisfaction of the requirements of Civil Rule 23(a)(2). Moreover, such common questions predominate over any questions affecting only individual members of the Class, as required by Civil Rule 23(b)(3). These common legal and factual questions derive from a common nucleus of operative facts regarding Defendants' liability for failure to issue or distribute the shares of Anthem common stock, or the sales proceeds therefrom, to the members of the Class in breach of Defendants' duties owed to and contractual covenants with the members of the Class.

38. The claims of Mell, Wilmes, Espel and Mataria are typical of the claims of the Class they seek to represent, pursuant to Civil Rule 23(a)(3). There are no conflicts between the interests of any of the named Plaintiffs and the interests of the members of the Class as a whole.

39. The named Plaintiffs will fairly and adequately protect and represent the interests of the Class, as required by Civil Rule 23(a)(4). The named Plaintiffs' interests are not antagonistic to the interests of any other member of the Class. Moreover, the named Plaintiffs have retained competent counsel experienced in class litigation to represent the members of the Class.

40. A class action is superior to other available methods for fair and efficient adjudication

of this litigation, in satisfaction of the requirements of Civil Rule 23(b)(3), since individual joinder of all members of the Class is impracticable. Even if the members of the Class were able individually to prosecute their individual actions, it would be unduly burdensome on the courts to proceed with hundreds of individual cases. By contrast, the class action device presents far fewer management difficulties and provides the benefits of unitary adjudication, economies of scale, and comprehensive supervision by a single court.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

41. From January 1, 1990 (and earlier) through December 31, 2001, inclusive, the City did business with Anthem, Anthem Insurance, CIC and CMIC. During this period of time, the City offered health insurance coverage to employees and retirees under the Group Policy maintained initially with CMIC and subsequently with Anthem/CIC and/or other subsidiaries and corporate affiliates of Anthem and Anthem Insurance.

42. Prior to October 1, 1995, the City maintained the Group Policy covering active and retired employees with CMIC. There were at least three fully-insured lines of business under the Group Policy which the City purchased as group health insurance from CMIC: (i) an HMP for its active employees, (ii) an HMP for its retired employees, and (iii) the firefighters' dental plan.

43. From January 1, 1990 through December 31, 1993, inclusive, CMIC provided the three fully-insured lines of business to the City's active and retired employees pursuant to a Master Group Contract dated on or about August 1, 1989 (the "1989 Master Contract") (attached hereto as Exhibit "A" and incorporated by referenced herein).

44. From January 1, 1994 through at least September 30, 1995, inclusive, CMIC provided the three fully-insured lines of business to the City's active and retired employees pursuant to a Group Contract dated on or about January 1, 1994 (the "1994 Group Contract") (attached hereto as Exhibit "B" and incorporated by reference herein).

45. On information and belief, from October 1, 1995 through December 31, 1999, inclusive, CIC provided the above-described three fully-insured lines of business to the City's active and retired employees pursuant to a new group contract or contracts (the "1995 Group Contract"). Despite diligent efforts, Plaintiffs have been unable to obtain a copy of the 1995 Group Contract in discovery or otherwise.

46. On information and belief, from January 1, 1998 through December 31, 1999, inclusive, CIC provided a fourth fully-insured line of business, the HOT rider, to the City's active employees pursuant to a new group contract (the "1998 HOT Rider Contract"). Despite diligent efforts, Plaintiffs have been unable to obtain a copy of the 1998 HOT Rider Contract.

47. On information and belief, during some part of all of the period of time between October 1, 1995 and December 31, 1999, there were other contracts in effect between CIC and the City providing for fully-insured group health insurance coverage and benefits to the City's active and/or retired employees (the "Missing Contracts") which, despite diligent efforts, Plaintiffs have been unable to obtain through discovery or otherwise.

48. From January 1, 2000 through November 2, 2001, inclusive, CIC provided the fully-insured firefighters' Dental Plan and the fully-insured HOT rider to the City's employees pursuant to a Fully Insured Master Contract dated on or about January 1, 2000 (the "2000 Fully Insured Master Contract") (attached hereto as Exhibit "C" and incorporated by reference herein).

49. From January 1, 2000 through November 2, 2001, inclusive, CIC provided the fully-insured HMP to the City's retirees pursuant to a Health Insuring Corporation Master Contract dated on or about January 1, 2000 (the "2000 Health Insuring Corporation Master Contract") (attached hereto as Exhibit "D" and incorporated by reference herein).

50. From time to time, the Group Policy, as defined above, consisted of, included and was evidenced by, *inter alia*, the 1989 Master Contract, the 1994 Group Contract, the 1995 Group

Contract, the 1998 HOT Rider Contract, the Missing Contracts, the 2000 Fully Insured Master Contract and the 2000 Health Insuring Corporation Master Contract, individually and collectively, as the case may be.

A. ENTITLEMENT UNDER THE 1995 MERGER CONTRACTS AND INDIANA INSURANCE LAW TO COMPENSATION IN THE EVENT OF ANTHEM INSURANCE'S DEMUTUALIZATION.

51. Effective October 1, 1995, Associated, an Indiana mutual insurance company, acquired CMIC, an Ohio mutual insurance company, through a merger transaction. Associated was the predecessor of Anthem Insurance and changed its name to Anthem Insurance Companies, Inc. immediately after the merger.

52. To effectuate the merger, Associated and CMIC jointly prepared and executed several agreements and other related documents and written materials. These agreements and related documents and materials included: (i) the Plan and Joint Agreement of Merger ("PJAM"), attached hereto as Exhibit "E" and incorporated by reference herein; (ii) the Second Amended and Restated Articles of Incorporation of Associated Insurance Companies, Inc. ("Second Amended Articles") attached hereto as Exhibit "F" and incorporated by reference herein; (iii) the Amended and Restated By-Laws of Associated Insurance Companies, Inc. ("Amended By-Laws"), attached hereto as Exhibit "G" and incorporated by reference herein; (iv) a Group Guaranty Health Policy for Future Community Contract Holders ("Guaranty Policy for Future Groups"), attached hereto in specimen form as Exhibit "H" and incorporated by reference herein; and (v) a Certificate of Membership and Summary of Benefits ("Certificate of Membership"), attached hereto in specimen form as Exhibit "I" and incorporated by reference herein.

53. Pursuant to the merger, CMIC was merged into Associated and CMIC ceased to exist after October 1, 1995. CMIC's business operations were transferred to and assumed by a new stock insurance corporation named CIC. After the merger, CIC operated as a health insurer and there were two components to CIC's business: (i) the insurance policies and health care benefits contracts that

had been issued by CMIC prior to the merger and (ii) the new insurance policies and health care contracts issued by CIC after the merger.

54. Unlike a stock corporation, a mutual company has no stock and therefore has no stockholders. A mutual company is owned by its members. Each mutual company has articles and by-laws that contain membership rules and define the persons that are its members. In some instances, the definition of a mutual member and the rules for membership are set forth in a state statute that governs mutual insurers domiciled in the particular state. Generally, the members of a mutual insurer are its policyholders, and in some cases the members are the persons insured under the policies issued by the mutual company.

55. Before the merger, Associated was a mutual insurance company and after the merger it remained a mutual company with a new name, Anthem Insurance. The merger agreements between Associated and CMIC, along with the related documents and materials, contained specific provisions that determined the persons that would be the members of Anthem Insurance after the merger. These provisions stated that the former members of CMIC would become members of Anthem Insurance. The former members of CMIC had their membership interests in CMIC essentially “grandfathered” and exchanged for membership interests in Anthem Insurance. These provisions also stated that *with respect to the health insurance policies originally issued by CIC after the merger Anthem’s members would include*: (i) each holder of an individual insurance policy or health care benefits contract and (ii) *each holder of a certificate of coverage under a group insurance policy* or health benefits contract.

56. The PJAM (attached hereto as Exhibit “E”) at Article V, “Continuity of Operations”, Section 5.2, provided in relevant part as follows:

Section 5.2 Future Guaranty Policies. As provided in Associated’s Second Amended and Restated Articles of Incorporation, with respect to CIC insurance policies and health care benefits contracts issued from and after the Effective Time, each holder of a CIC

group or individual insurance policy or health care benefits contract originally issued at or after the Effective Time shall be entitled to receive an Associated guaranty insurance policy, and ***each holder of a certificate of coverage under a group CIC insurance policy*** or health care benefits contract ***originally issued after the Effective Time shall be entitled to receive an Associated certificate of membership*** issued under an Associated group guaranty policy. (emphasis supplied)

57. The Second Amended Articles (attached hereto as Exhibit “F”) at Article VII, “Members”, Sections 7.1 and 7.5 provided, in respective relevant part, as follows:

Section 7.1. Members. The members of [Associated] shall be: (a) all persons to whom certificates of membership are issued, and (b) all persons who have the rights of members granted to them under insurance agreements made between [Associated] and employers, or group agents, of such persons acting for and on their behalf. Membership in [Associated] shall be evidenced by certificates of membership issued by [Associated] in such form as [Associated] may from time to time approve; or where membership is held under agreements, as permitted by clause (b) of this Section 7.1, by such other documents as may be agreed upon by the parties thereto.

* * *

*Section 7.5. Membership Rights of Post-Merger Contract Holders and Certificate Holders of CIC. (a) Except as set forth in Section 7.5(b), from and after effectiveness of the Community Merger, each holder of a CIC group or individual insurance policy or health care benefits contract shall be entitled to receive a guaranty insurance policy from [Associated], and ***each holder of a certificate of coverage under a CIC group insurance policy*** or health care benefits ***contract shall be entitled to receive a certificate of membership from [Associated]***. Each such individual guaranty insurance policy and each such certificate of membership issued under a group guaranty insurance policy shall grant the following rights: ... (iii) ***rights in the event of a ... demutualization*** or conversion ***of [Associated]*** described in Section 8.1. ***as provided under the Indiana Insurance Law*** and as set forth in Article VIII. (Emphasis supplied.)*

58. The Amended By-Laws (attached hereto as Exhibit “G”) at Article I, “Membership,” Section 1.1, provided in relevant part as follows:

Section 1.1. Members. The ***Members of the Corporation shall be:***

(a) all persons to whom Certificates of Membership are issued and (b) all persons who have the rights of members granted to them under insurance agreements made between [Associated] and employers, or group agents, of such persons acting for and on their behalf. (emphasis supplied)

59. After the merger, Associated issued a Guaranty Policy for Future Groups (attached hereto in specimen form as Exhibit “H”) to each employer that contracted with CIC and sponsored a group health policy insuring its employees and retirees. The Guaranty Policy for Future Groups contained a provision that made the employer the *fiduciary agent* for its insured employees and retirees. On page ten, the Guaranty Policy for Future Groups specified, “[t]he Policyholder [employer] is the *fiduciary agent* of the Covered Persons [employees and retirees] hereunder.” The Guaranty Policy for Future Groups also provided that *Ohio law* governed. Also on page ten, the Guaranty Policy for Future Groups specified, “[t]he parties to this Policy agree it will be subject to *Ohio law*.”

60. The Guaranty Policy for Future Groups expressly provided that *the members of Associated* (later renamed Anthem Insurance) *were the employees and retirees* insured under a group health policy issued by CIC after the merger, not the employer that sponsored the group health policy. The term “Associated Member” is defined in Article I of the Guaranty Policy for Future Groups:

“Associated Member means each person who has enrolled for insurance or health care benefits under the Community Contract [group policy] and who was eligible to enroll for such benefits under the Community Contract because of the person’s status as (1) *an employee of the Policyholder, if the Policyholder is an employer ...*” (emphasis supplied)

61. The Guaranty Policy for Future Groups contained a provision describing in detail the membership rights of employees. This provision also granted to employees and retirees, but specifically denied to employers, equity rights in the event Associated (later Anthem Insurance) demutualized. At Article IV, “Membership Rights,” the Guaranty Policy for Future Groups

provided in relevant part on page 3 as follows:

As long as this Policy is in effect, *each Associated Member [employees and retirees] shall be entitled to all of the rights of membership in Associated accorded to members of a mutual insurance company under Indiana law, including ... equity rights in the event of ... demutualization* as provided in Associated's Articles of Incorporation from time to time in effect. Such equity rights are intended to be equivalent to the rights which the Associated Member would have as a member under an Associated policy if Associated, rather than Community [CIC], had issued the Community Contract, and shall accrue solely to the Associated Member. *No Policyholder [employer] or dependent of an Associated Member shall receive any equity rights* by virtue of being a Policyholder or dependent of an Associated Member (emphasis supplied).

62. The Guaranty Policy for Future Groups contained a provision requiring Associated to deliver to the employers Certificates of Membership to distribute to their employees and retirees. These Certificates of Membership would evidence the employees' and retirees' membership interests in Associated. At Article VII, "General Provisions Certificate of Membership," the Guaranty Policy for Future Groups provided in relevant part, on page 4, as follows:

Associated will provide the Policyholder [employer], for delivery to each Associated Member, with *Certificates of Membership* that describe this Policy's benefits, provide claim filing instructions, and *evidence the Associated Member's interest in Associated as a member* (emphasis supplied).

63. The Certificate of Membership that employers distributed to their employees and retirees (Exhibit "I") contained two provisions that mirrored those found in the Guaranty Policy for Future Groups:

This Certificate of Membership and Summary of Benefits ("Certificate") is issued to you as the Associated Member identified in the application for insurance or health care benefits under a group policy or contract issued by Community Insurance Company ("Community"). You have coverage for insurance or health care benefits under a group health care benefits contract or group insurance contract issued by Community.

* * *

As long as the Guaranty Policy is in effect, *you will be a member of Associated entitled to all rights of membership in Associated accorded to members of a mutual insurance company under the Indiana Insurance Law, including ... equity rights in the event of a ... demutualization* as provided in Associated's Articles of Incorporation from time to time in effect. Such equity rights are intended to be equivalent to the rights which you would have as a member under an Associated policy if Associated rather than Community had issued the Community contract. (Emphasis supplied.)

64. Based on the relevant provisions found in the PJAM, the Second Amended Articles, the Amended By-Laws, the Guaranty Policy for Future Groups and the Certificate of Membership, it is abundantly clear that the insured employees and retirees became members of Associated (later renamed Anthem Insurance) with respect to group health policies issued by CIC after the merger. It is also clear that the employers sponsoring group policies issued by CIC after the merger did not become members of Associated. More importantly, as members of Associated, the insured employees and retirees had equity rights in the event of a demutualization under both Indiana Insurance Law and as provided in Associated's Articles of Incorporation. The employers that sponsored the group policies issued by CIC after the merger had no equity rights in the event of a demutualization.

65. Indiana Insurance Law requires the members of a mutual insurance company to be paid compensation in the form of cash or stock in the event of a demutualization. *See* IC 27-15-8-1 (1) and (2).

66. The Second Amended Articles similarly required that Associated's members be paid cash or stock compensation in the event of Associated's (later Anthem Insurance's) demutualization. This requirement appeared in Article VIII, "Liquidation, Merger or Demutualization," at Sections 8.1 and 8.4:

Section 8.1. Rights of Members in General. All members of [Associated] shall be entitled, upon ... any demutualization or

*conversion of [Associated] from a mutual to a stock insurance company, to such distributions in the form of cash, securities or other assets, and such other membership and other rights and privileges, as may from time to time be provided by the **Indiana Insurance Law**.*

* * *

Section 8.4. Rights of Members. Any member of [Associated] who has an individual guaranty insurance policy of [Associated] or a certificate of membership issued under a group guaranty insurance policy of [Associated] guaranteeing the payment of medical, surgical, hospital or other health care benefits provided under an insurance policy or health care benefits contract or certificate of coverage issued by:

* * *

- (c) *CIC; shall be entitled, upon any ... demutualization or conversion of [Associated] described in Section 8.1, to distributions in the form of cash, securities or other assets, and other membership and other rights and privileges, equivalent to those that the member would have if such member had owned an insurance policy or held a certificate of membership under a group insurance policy, issued directly by [Associated], having terms, conditions and benefits equivalent to such member's policy or contract with, or certificate of coverage from ... CIC ... (emphasis supplied)*

67. Sometime after the Merger, CIC issued a group health insurance policy to the City. This group policy originally issued after the Merger by CIC to the City is referred to as the 1995 Group Contract and is described above. The 1995 Group Contract provided health insurance coverage to certain active employees and retirees of the City through a HMP. As the surviving spouse of a City retiree, Wilmes was one of the participants in the HMP.

68. On account of CIC having originally issued to the City after the merger the 1995 Group Contract, Wilmes received a certificate of coverage ("Certificate of Coverage") from CIC. The Certificate of Coverage indicated that she was insured under an employer-sponsored group

health policy. The Certificate of Coverage that Wilmes received is attached hereto as Exhibit “J” and incorporated by reference herein.

69. The first page of the Certificate of Coverage includes the following designation: “HMP Group Health Care Benefits CG006 Rev. 1/96.” In the lower left corner of the first page, there is another designation: “CCS-30 REV. 12/95.” Accordingly, on information and belief, Wilmes received her Certificate of Coverage from CIC no earlier than in or about January 1996.

70. On page iii of its Preface, the Certificate of Coverage explains:

This Certificate is issued to you by Community Insurance Company dba Anthem Blue Cross and Blue Shield (Anthem) ... Your health care coverage is offered through your employer ... Your employer ... will be referred to in this Certificate as a “Group.” The Group Contract is the agreement a Group makes with Anthem for the Plan to be offered to employees. The Group contract, on file with your employer, controls all the terms of your enrollment and health benefits under the Plan.

71. After the merger, CIC provided Wilmes with other materials in connection with her participation in the HMP under the 1995 Group Contract, including a Health Maintenance Plan Handbook (“Handbook”) (attached hereto as Exhibit “K” and incorporated by reference herein), and an Index to the Health Maintenance Plan (“Index”) (attached hereto as Exhibit “L” and incorporated by reference herein). The Handbook’s back cover, in the lower left corner, contains the designation “P-541 REV. 1/96.” The Index states, “WELCOME TO THE HEALTH MAINTENANCE PLAN! As a new member of HMP, you will receive quality health care coverage, along with our commitment to serving you.” The lower left corner of the Index contains the designation “L-94 (REV. 10/95).”

72. Most importantly, at some point in time after the merger, Wilmes received her Certificate of Membership in Associated (attached hereto as Exhibit “M” and incorporated by reference herein). The Certificate of Membership that Wilmes received differs from the specimen form attached hereto as Exhibit “I.” Wilmes’ Certificate of Membership bears the signature of L.

Ben Lytle, Associated's President and Chief Executive Officer, along with the designation "AICMC02 (10/95)," and consists of one page. The two-page-long specimen Certificate of Membership bears a different designation "08/18/95 – 0097655.01" in the lower left on page two, and is not signed by an Associated officer.

73. The Certificate of Membership proves that, following the Merger, Wilmes became a member of Associated, not the City. After the merger there were many other active employees and retirees of the City in the HMP offered under the 1995 Group Contract who also received Certificates of Membership and became members of Associated.

74. Under the express terms of her Certificate of Membership, Wilmes received equity rights under both Indiana Insurance Law and the Second Amended Articles in the event Associated (later Anthem Insurance) demutualized. On information and belief, many other active and retired employees of the City similarly received equity rights under both Indiana Insurance Law and the Second Amended Articles in the event Associated demutualized.

75. Based on the fact Wilmes received a Certificate of Membership in Associated, on information and belief after the Merger Associated issued a Guaranty Policy for Future Groups to the City. Despite diligent efforts to date, this Guaranty Policy for Future Groups Associated issued to the City has not been found and it is among the Missing Contracts described above.

76. Since Wilmes received a Certificate of Membership, on information and belief Associated provided the City with many Certificates of Membership following the Merger. Following the instructions in the Guaranty Policy for Future Groups at Article VII, the City then delivered these Certificates of Membership to Frieda M. Wilmes and its other active employees and retirees who were insured under the HMP offered through the 1995 Group Contract.

77. On information and belief, in 2001 when Anthem Insurance demutualized, Defendants and each of them, jointly and severally, knew or should have known that Wilmes and

other retirees of the City insured under the HMP were members of Anthem Insurance, not the City, and were entitled to receive cash and stock compensation from the demutualization rather than the City.

78. In addition to the 1995 Group Contract, CIC originally issued other group policies to the City after the Merger, including the 1998 HOT Rider Contract, the 2000 Fully Insured Master Contract (Exhibit “C”), the 2000 Health Insuring Corporation Master Contract (Exhibit “D”), and an unknown number of Missing Contracts.

79. The active employees and retirees of the City insured under (i) the 1998 HOT Rider Contract, (ii) the 2000 Fully Insured Master Contract, (iii) the 2000 Health Insuring Corporation Master Contract, and (iv) an unknown number of Missing Contracts all became members of Anthem Insurance for the same reason Wilmes became a member of Anthem Insurance – they were employees and retirees insured under group health policies originally issued by CIC after the Merger.

80. As members of Anthem Insurance, the City’s active and retired employees insured under the 1995 Group Contract, the 1998 HOT Rider Contract, the 2000 Fully Insured Master Contract, the 2000 Health Insuring Corporation Master Contract, and an unknown number of Missing Contracts were each granted equity rights under Indiana Insurance Law and Associated’s Second Amended Articles in the event Anthem Insurance demutualized. Accordingly, each of these insured City employees and retirees was entitled to cash and stock compensation when Anthem Insurance demutualized in 2001 rather than their employer, the City.

B. ENTITLEMENT UNDER OHIO LAW TO STOCK COMPENSATION UPON CMIC’S DEMUTUALIZATION.

81. Although the members of the Class were entitled to receive demutualization compensation under both Indiana Insurance Law and as provided in Associated’s Second Amended Articles, the members of the Class were also entitled to demutualization compensation under Ohio

Insurance Law.

82. CMIC and the Group Policy covering the City's employees and retirees were subject to Ohio law. Under Ohio law, the contracts of insurance maintained initially between the City and CMIC, and subsequently with Anthem/CIC, incorporated Ohio statutory provisions governing and regulating insurance contracts and policies.

83. Specifically, the terms, provisions and requirements of R.C. 3913.22(A) and (D) and R.C. 3913.20(B) were incorporated into the Group Policy that the City maintained with CMIC during 1995 and prior to CMIC's merger into Anthem Insurance.

84. In the event an Ohio mutual insurance company, such as CMIC, converts to a stock insurance corporation, R.C. 3913.22(A) provides that each mutual *policyholder* is entitled to shares of stock of the new stock corporation. For purposes of R.C. 3913.20 through 3913.23, inclusive, Section 3913.20(B) defines the term "policyholder" as follows:

(B) "*Policyholder*" means the person, group of persons, association, corporation, partnership, or other entity *named as the insured* under a mutual policy of insurance other than life issued and in force on the date of the examination conducted pursuant to division (C) of section 3913.21 of the Revised Code. (Emphasis supplied.)

85. In the event an Ohio mutual insurance company, such as CMIC, converts to a stock insurance corporation, R.C. 3913.22(A) provides that each mutual *policyholder* is entitled to stock compensation and limits the cash payment to a *policyholder* to the value of just a fractional share. In relevant part, R.C. 3913.22(A) reads as follows:

In effecting a conversion of a mutual insurance company into a stock insurance corporation pursuant to sections 3913.20 to 3913.23, inclusive, of the Revised Code, *each mutual policyholder is entitled to such shares of stock of the new corporation as his equitable share of the value of the mutual company will purchase. If such equitable share of the value of the mutual company entitles a policyholder to a fractional share of stock, he shall have the option of receiving the value of such fractional*

share in cash or of purchasing such additional fraction as will entitle him to a full share.

86. R.C. 3913.22(A) permits the payment of cash compensation to a *policyholder*, but only to the extent of the value of a fractional share. The statute provides the *policyholder* with the option of receiving the value of a fractional share in cash. Under R.C. 3913.22(A), the converting mutual, such as CMIC, does not have the authority to pay cash to a *policyholder* for the full value of even a single share. The statute limits the cash payment to a *policyholder* to the value of just a fractional share and at the option of the *policyholder*.

87. In the event an Ohio mutual insurance company, such as CMIC, converts to a stock insurance corporation, R.C. 3913.22(D) provides that each mutual *policyholder's ownership interest* in the converting mutual company terminates. Thereafter, his *ownership interest* is represented solely by the shares of stock of the new corporation issued to him. R.C. 3913.22(D) provides in pertinent part:

From and after the date of issuance of shares to a *policyholder* pursuant to sections 3913.20 to 3913.24, inclusive, of the Revised Code, *his ownership interest in the company as a mutual policyholder* terminates, and such *ownership interest* shall thenceforth be represented solely by the shares of stock in the new corporation issued to him, but no other rights or liabilities of the policyholder arising under his policy are affected by such issuance of stock.

88. Prior to the conversion of an Ohio mutual insurance company to a stock insurance corporation, R.C. 3913.22(D) expressly provides that each *policyholder* has an ownership interest in the mutual company.

89. Under well-established principles of insurance law, a mutual insurance company is owned by its *members* collectively.

90. Thus, for demutualization purposes in Ohio, the Ohio insurance statute clearly recognizes the *policyholders* (defined by R.C. 3913.20(B) to be "*the person [or] group of persons*

... *named as the insured under a group policy of insurance*") to constitute both (i) the owners-*members* of the mutual insurance company pursuant to R.C. 3913.22(D), and (ii) the persons *entitled* to the shares of the new stock corporation pursuant to R.C. 3913.22(A).

91. The City Defendants and the Anthem Defendants may dispute whether Plaintiffs and the other Class members were "named insureds" under the Group Policy, and thus whether they were "policyholders" as that term is defined in R.C. 3913.20(B). The leading legal dictionary defines the term "*named insured*" as follows:

Named insured. In insurance, *the person specifically designated in the policy as the one protected* and, commonly, it is the person with whom the contract of insurance has been made.

BLACK'S LAW DICTIONARY 922 (5th ed. 1979) (emphasis supplied).

92. As noted by the leading treatise on insurance law, in the context of a group health insurance policy, *the employee or retiree is named as the insured*:

Policies of medical insurance generally cover the named insured, and dependents of the named insured. Although assessments on a policy of group medical insurance are primarily the responsibility of the employer or other entity which purchased the policy, the insured under such a policy is the employee or group member.

10A *G. Couch, Insurance*, § 144:26 (3rd ed. 1998).

93. Almost a dozen Ohio health insurance statutes support the conclusion that, in the context of group health insurance, the employees and retirees are the named insureds, not their employer. These health insurance statutes uniformly refer to employees as the "insureds" or as members of the "insured group" under a group policy, including without limitation R.C. 3923.12(C)(2), 3923.12(C)(3), 3923.13(B), 3923.121(A)(3), 3923.123(A)(3), 3923.381(A)(2), 3923.38(A)(1)(a), 3923.44(H), 3923.44(I), 1751.56(A)(3), and 1751.56(B).

94. The Ohio Department of Insurance published a booklet entitled *Health Insurance Guide: How to Get the Most Out of Your Health Coverage*, attached hereto as Exhibit "N" and

incorporated by reference herein. In this official publication of the State of Ohio, Chapter 10 contains a glossary of common terms used in the context of health insurance. The term “certificate holder” is defined as “[a]n *employee or other insured named under a group health insurance policy*” (emphasis supplied). This definition adopted by the Ohio Department of Insurance further evidences the fact that Plaintiffs and the other Class members were the named insureds under the Group Policy, not their respective employers.

95. Anthem prepared a document entitled *Notice of Privacy Practices* (attached hereto as Exhibit “O” and incorporated by reference herein) and distributed it in connection with its group health policies. The *Notice* clearly indicates that Anthem considers an employee to be the “named insured” when covered by an employer-sponsored group health policy. For example, in explaining the delivery of revised privacy notices, at paragraph 2 on page 1 entitled “Our Legal Duties,” Anthem told its policyholders:

Any revised notice will be provided to you by one of the following means: (1) By mail to the named insured under the terms of your coverage. (2) By delivery of the notice by *the named insured’s employer if you are enrolled in employer-sponsored group insurance coverage*. (Emphasis supplied.)

96. As the persons or members of the group of persons *named as the insureds*, the individual Class members were *policyholders* of a mutual insurance company who, under R.C. 3913.22(A), were entitled to receive compensation in the form of shares of stock in the event CMIC converted from a mutual insurance company into a stock corporation. In addition, R.C. 3913.22(D) specifies that the individual Class members have ownership rights and interests in a mutual insurance company. Thus, at least for demutualization purposes, the individual Class members were recognized by statute as *members* of a mutual insurance company.

97. In 1995, the City owned the CMIC Group Policy, and may have been deemed a policyholder of CMIC for other purposes. However, the City was *not* the named insured under the

Group Policy and thus was not a “*policyholder*” within the definition of R.C. 3913.20(B). Therefore, the City was not entitled to stock compensation under R.C. 3913.22(A) upon a demutualization of CMIC, and were not specified as having ownership rights and interests in a mutual insurance company by R.C. 3913.22(D). Thus, the City was not recognized by Ohio statutes as a *member* of a mutual insurance company for demutualization purposes.

C. FOLLOWING THE 1995 ACQUISITION OF CMIC BY ANTHEM INSURANCE, THE CITY WAS NOT ENTITLED TO STOCK COMPENSATION UPON ANTHEM INSURANCE’S DEMUTUALIZATION.

98. Effective October 1, 1995, Associated, an Indiana mutual insurance company, acquired CMIC through a merger transaction. Associated was the predecessor of Anthem Insurance and changed its name to Anthem Insurance Companies, Inc. immediately after the merger.

99. Under the PJAM (Exhibit “E”), the former members of CMIC were given rights in the event of Associated’s (later Anthem Insurance’s) demutualization. PJAM was the agreement that effectuated the merger between Associated and CMIC.

100. Under Article III of PJAM, “Effect of Merger,” Section 3.1(B)(3) gave to the former CMIC members these rights:

rights in the event of ... demutualization of Associated ... as set forth herein, therein and in Associated’s Second Amended and Restated Articles of Incorporation, which rights are intended to be equivalent to the rights such Member would have had if such [CMIC] Member had owned an insurance policy, issued directly by Associated, having terms, conditions and benefits equivalent to that [CMIC] Member’s insurance policy or health care benefits contract, as the case may be, assumed by CIC and which rights shall reflect and include in full ... the value of that [CMIC] Member’s interest in [CMIC] immediately prior to the Effective time of the Merger. (Emphasis supplied.)

101. Giving proper effect to Section 3.1(B)(3) of PJAM, if Associated (instead of CMIC) had issued the Group Policy to the City, then Associated’s membership rules and not CMIC’s membership rules would have determined whether the City was a mutual member or whether its employees were mutual members. For group health insurance policies issued by Associated (later

Anthem Insurance), the employer was not the member – the members were the employees insured by the Associated group policy. Therefore, Section 3.1(B)(3) required Associated (later Anthem Insurance) to recognize Plaintiffs as its members, not the City.

102. Two additional documents confirm the fact that, under Associated’s membership rules, the employees covered by an Associated (later Anthem Insurance) group policy were the mutual members, not their employer.

103. On October 25, 2001, the Commissioner of the Indiana Department of Insurance (“Commissioner”) issued her “Findings of Fact, Conclusions of Law and Order Granting Application with Conditions” (“Order”) (attached hereto as Exhibit “P” and incorporated by reference herein). The Order approved the proposed demutualization of Anthem Insurance and contains a description of Anthem Insurance’s membership rules with respect to group policies. At Part III, “Description of Conversion,” the membership rules for group policies are described in paragraph twenty-six:

Group policyholders in Indiana are not Statutory Members (the individual certificate holders under those group Policies generally are Statutory Members). (Emphasis supplied.)

104. Anthem Insurance provided a description of its membership rules with respect to its group policies in a “Notice of Proposed Exemption” published in the *Federal Register* on August 3, 2001 (“Notice of Exemption”) (attached hereto as Exhibit “Q” and incorporated by reference herein). The rules appeared at page 40744 of the Notice, in paragraph two:

Unlike most insurance companies, *Anthem generally treats individual certificate holders under its group contracts as members* instead of the group contract holders. Thus, *in most cases, employers* who fund their Plans with Anthem group contracts *are not the members of Anthem*. Instead, the participants in these Plans are the members. (Emphasis supplied.)

105. Section 3.1(B)(C) of PJAM specified that the demutualization rights of CMIC’s former members were also set forth in Associated’s Second Amended Articles (Exhibit “F”). In

Article VIII, “Liquidation, Merger or Demutualization” at Section 8.3, the former members of CMIC were given rights in the event of Associated’s (later Anthem Insurance’s) demutualization:

Accordingly, *upon any ... demutualization ... of [Associated (later Anthem Insurance)] ... in the determination of the rights of any member of [Associated (later Anthem Insurance)] who was, immediately prior to the Community Merger, a member of [CMIC], full account and credit shall be given to such member of its former interests in [CMIC], which rights shall reflect and include in full ... the value of such member’s interests in [CMIC] immediately prior to the Community Merger* (it being understood for, illustrative purposes, that if a ... demutualization ... of [Associated (later Anthem Insurance)] had occurred immediately after the Community Merger, each member of [Associated (later Anthem Insurance)] who was, immediately prior to the Community Merger, a member of [CMIC], would be entitled to the same value, calculated in accordance with *Ohio law*, as though a ... demutualization ... of [CMIC] had occurred immediately prior to the Community Merger). (Emphasis supplied.)

106. Following consummation of the 1995 merger between Associated and CMIC, Section 3.1(B) of PJAM required Associated to issue a guaranty policy/membership certificate to each of CMIC’s former members. A Group Guaranty Health Policy and Certificate of Membership (“Guaranty Policy for Current Groups”), in the form of a specimen policy (attached hereto as Exhibit “R” and incorporated by reference herein), was supposed to be issued to existing group employers.

107. Anthem Insurance subsequently issued, and the City subsequently received, a Guaranty Policy for Current Groups in or after April 1997 (attached hereto as Exhibit “S” and incorporated by reference herein). Since Wilmes had received a Certificate of Membership from Associated more than a year earlier, on information and belief the Guaranty Policy for Current Groups that Anthem Insurance issued to the City no earlier than April 1997, purportedly granting to the City a membership interest in Anthem Insurance, is unauthentic and invalid.

108. The Guaranty Policy for Current Groups, at Article IV entitled “Membership Rights,” provided the following rights in the event of Associated’s (later Anthem Insurance’s) demutualization:

As long as this Policy is in effect, the Associated Member shall be entitled to all of the rights of membership in Associated accorded to members of a mutual insurance company under Indiana law, ***including ... equity rights on the event of ... demutualization as provided in Associated's Articles of Incorporation*** from time to time in effect. ***Such equity rights are intended to be equivalent to the rights which the Associated Member would have as a member under an Associated policy if Associated, rather than [CMIC], had issued the [CMIC] Contract,*** and shall accrue solely to the Associated Member. No Enrollee or dependent of an Enrollee shall receive any equity rights by virtue of being an Enrollee or dependent of an Enrollee. As provided in Associated's Articles of Incorporation from time to time in effect, ***the Associated Member's rights shall reflect and include in full the value of the Associated Member's interest in [CMIC] immediately prior to the merger of [CMIC] and Associated . . .*** (Emphasis supplied.)

109. The Guaranty Policy for Current Groups also provided that “[t]he Associated Member [the City] is ***the fiduciary agent*** of the Covered Persons [the Class members] hereunder.” (Emphasis supplied.)

110. The Guaranty Policy for Current Groups further provided that “[t]he parties to this Policy agree it will be subject to ***Ohio law.***” (Emphasis supplied.)

111. Prior to October 1, 1995, CMIC and Associated mailed multiple documents in connection with the Merger to the City. These documents included, without limitation, the PJAM, Second Amended Articles, an *Information Circular*, Merger Agreement and specimen Guaranty Policies (*see* Exhibits “E”, “F”, “H” and “R” attached hereto, respectively. None of these documents was provided to the Plaintiffs and/or the Class members.

112. Pursuant to express language contained in the Guaranty Policy for Current Groups, the City owed a fiduciary duty to Plaintiffs and the Class to understand the provisions of the various Merger documents in its possession and Ohio insurance law that applied in the event Associated (later Anthem Insurance) demutualized.

113. Sometime in or after April of 1997, the City breached its fiduciary duty by accepting the Guaranty Policy for Current Groups (attached hereto as Exhibit “S”) issued by Anthem Insurance

and thereby consenting to a flawed provision in the Guaranty Policy for Current Groups that conflicted with the provisions of other Merger documents as well as R.C. 3913.22(A) and (D), and ignores the definition of “policyholder” set forth in R.C. 3913.20(B). This flawed provision purports to deny demutualization compensation to the Plaintiffs and the Class, and is set forth in Article IV, “Membership Rights,” providing in relevant part:

No Enrollee [the Plaintiffs and the Class] or dependent of an Enrollee shall receive any equity rights by virtue of being an Enrollee or dependent of an Enrollee.

114. In 2001 and early 2002, the City had a fiduciary duty to review the Merger documents and to determine from these documents whether the Plaintiffs and the Class members had a right to stock compensation upon Anthem Insurance’s demutualization.

115. Under the “Agreement to Merge” dated March 13, 1995 by and between CMIC and Associated (“Merger Agreement”), attached hereto as Exhibit “T” and incorporated by reference herein, the former members of CMIC became members of Associated and were given rights in the event of Associated’s (later Anthem Insurance’s) demutualization identical to the demutualization rights they had under Ohio law with respect to CMIC.

116. Under Article III of the Merger Agreement, “Manner of Effecting Merger,” Section 3.1.B.(ii)(c) gave to the former CMIC members:

rights in the event of the ... demutualization of Associated ... which rights are intended to be equivalent to the rights such Member would have had if such [CMIC] Member had owned an insurance policy, issued directly by Associated, having terms, conditions and benefits equivalent to that [CMIC] Member’s insurance policy or health care benefits contract assumed or issued by CIC, and which rights shall reflect and include in full ... the value of that [CMIC] Member’s interest in [CMIC] immediately prior to the Effective Time (it being understood, for illustrative purposes, that if a ... demutualization of Associated were to occur immediately after the Effective Time, ***each [CMIC] Member would be entitled to the same value calculated in accordance with the Ohio Insurance Law as though ... a demutualization of [CMIC] had occurred*** immediately prior to the Effective Time).

(Emphasis supplied.)

117. CMIC furnished its members with an *Information Circular* in connection with the solicitation of proxies for the merger with Associated (relevant portions of which are attached hereto as Exhibit “U” and incorporated by reference herein). Contrary to the provisions of R.C. 3913.22(D), CMIC’s books and records reflected that the City was the mutual member of CMIC, not the persons named as the insureds or the group of persons named as the insureds in the Group Policy. No member of the Class received a copy of the Information Circular.

118. The *Information Circular* provided at page 3:

The Guaranty Policy will also afford the member ... (b) rights in the event of the ... demutualization of Associated after the Merger. These rights are intended to be equivalent to the rights the member would have if the member owned an insurance policy from Associated providing for the same terms, conditions and benefits as provided by the member’s New Community insurance policy or health care benefits contract. ***These rights will also include in full the value of the member’s interest in [CMIC] immediately prior to the Merger . . .*** (Emphasis supplied.)

119. The *Information Circular* also provided, at pages 10-11:

The Guaranty Policies will also give membership rights in Associated to the members of [CMIC]. ***The interests of [CMIC’s] members will be preserved (essentially transformed into equivalent interests in Associated)*** and the members’ future membership interests in Associated will be equivalent to those they would have if they owned an insurance policy issued directly by Associated having terms, conditions and benefits equivalent to those of the New Community policy guaranteed by the Guaranty Policy. (Emphasis supplied.)

120. Finally, the *Information Circular* stated at page 11:

Members of Indiana mutual insurance companies like Associated may be entitled to distributions in respect of their proprietary interests in the event of their company’s ... demutualization. Associated has indicated that it has no current plans for any such transactions, but if any such transaction were to occur, ***the rights of each former member of [CMIC] who is then a member of Associated would reflect in full the value of such member’s***

interest in [CMIC] immediately prior to the Merger . . .
(Emphasis supplied.)

121. Thus, if the City was considered a member of CMIC prior to the merger, pursuant to the Merger Agreement the City received rights upon the demutualization of Anthem Insurance equivalent to the rights in the Group Policy that the City had under Ohio law.

122. If CMIC had demutualized immediately prior to its 1995 merger with Associated, Ohio law would have governed the demutualization of CMIC. Under Ohio law, the City would not have been entitled to any compensation in the form of stock or otherwise. In other words, the value of the City's interest in the event of CMIC's demutualization was zero.

123. Section 3.1.B.(ii)(c) of the Merger Agreement specified that the rights of the City in the event of the demutualization of Associated (later Anthem Insurance) must reflect and be equivalent to the value of the City's interest in CMIC prior to the merger.

124. Since the post-merger demutualization rights of the City were intended under the Merger Agreement to be the exact equivalent of the City's pre-merger demutualization rights, the City was not entitled to receive any shares of stock or other compensation in the event Anthem Insurance demutualized.

125. Under the Group Policy, only the Class members had entitlements to stock compensation and ownership interests in the event of a demutualization.

126. A group insurance policy is a third-party beneficiary contract in which the employer contracts with an insurer to provide coverage for its employees and retirees. Therefore, the Class members were third-party beneficiaries of the Group Policy that the City maintained initially with CMIC and subsequently with CIC.

127. As shown above, if CMIC had demutualized before its merger with Associated, the Class members were entitled under Ohio law to receive the stock compensation. Thus, the Class members were entitled to approximately 870,021 Anthem shares of common stock allocated to the

Group Policy.

128. The effect of Section 3.1.B.(ii)(c) of the Merger Agreement is to require compensation in the form of Anthem stock to be paid to the Class members upon Anthem Insurance's demutualization. The Class members insured under the Group Policy were the *policyholders* entitled to such stock under R.C. 3913.20(B) and 3913.22(A).

129. For reasons of sound public policy, Ohio law entitling *policyholders* to compensation in the event of the demutualization of an Ohio-domiciled mutual insurance company must not be circumvented. Otherwise, an out-of-state mutual insurer like Associated (Anthem Insurance) could acquire an Ohio-domiciled mutual insurer like CMIC and subsequently demutualize under foreign (Indiana) insurance law that has no provision similar to R.C. 3913.22(A) to protect the rights of the named insureds under a Group Policy issued by the acquired Ohio mutual company (CMIC).

130. The foregoing scenario is what actually occurred in November and December 2001. The Class members' rights under Ohio law to receive the stock compensation issued by Anthem and Anthem Insurance, valued at over \$54.7 million when sold in early 2002, were not respected; instead, the City received the stock that should have gone to the Class members and kept the shares for itself. Defendants maneuvered around the *policyholders'* rights under Ohio law and the City received a windfall at the expense of the Class members.

131. The Merger documents, including without limitation, the PJAM, the Merger Agreement, the *Information Circular*, the Second Amended Articles, the Amended By-Laws, the Guaranty Policies, and the Certificate of Membership must be interpreted in a manner that is consistent with the Ohio Insurance Law in effect at the time of the Merger. Under Ohio Insurance Law, and specifically the provisions found in R.C. 3913.20(B), 3913.22(A) and 3913.22(D), in effect at the time of the Merger, the employees and retirees insured under CMIC's group health insurance policies were entitled to demutualization compensation, not their employers.

132. The express references to “Ohio law” and “Ohio Insurance law” demonstrate that Associated and CMIC incorporated into their contracts the rights that Ohio Insurance Law provided to employees and retirees insured under CMIC’s group health insurance policies, including rights to demutualization compensation.

133. Therefore, the Merger documents did not divest the employees and retirees insured under CMIC’s group policies of their rights to stock compensation under Ohio Insurance Law. Nor did the Merger documents transfer such rights to demutualization compensation away from the insured employees and retirees and to their respective employers. Indeed, immediately prior to the Merger, the applicable Indiana Insurance Law and Associated’s articles and by-laws did not recognize Indiana employers sponsoring group health programs for their employees as the mutual members of Associated with entitlements to compensation in the event Associated demutualized.

134. To the contrary, the Merger documents should be construed and interpreted by the Court in a manner that preserves the Class members’ individual entitlements to demutualization compensation as such entitlements existed immediately prior to the Merger.

135. Statements appearing at page 8 of the *Information Circular* (attached hereto as Exhibit “U”) reveal Associated’s and CMIC’s misunderstanding of Ohio Insurance Law, particularly the provisions of R.C. 3913.20(B), 3913.22(A) and 3913.22(D):

Group policyholders of [CMIC] also possess certain *proprietary rights* in [CMIC]. In order to preserve the existing voting and proprietary rights of [CMIC’s] group policyholders, *Associated’s general practice regarding* voting and *other membership rights* relating to group policies will *not apply* to holders of group policies issued by [CMIC].

136. These statements in the *Information Circular* reveal a misinformed intent to preserve proprietary rights of employers that simply did not exist before the Merger and that cannot be reconciled with the provisions of R.C. 3913.20(B), 3913.22(A) and 3913.22(D). The provisions of R.C. 3913.20(B), 3913.22(A) and 3913.22(D) are to the contrary and recognize that the employees

and retirees insured under CMIC's group health policies had *ownership interests* in the mutual insurer and were *entitled to stock compensation* in the event of CMIC's demutualization.

137. In the event the Merger documents were prepared and executed based on a mistaken understanding of Ohio Insurance Law, this Court should reform such provisions in the Merger documents to conform to Ohio Insurance Law in order to preserve the Class members' individual entitlements to demutualization compensation that existed under Ohio Insurance Law immediately prior to the Merger.

D. THE DEMUTUALIZATION OF ANTHEM INSURANCE

138. On June 18, 2001, the Board of Directors of Anthem Insurance approved a Plan of Conversion of Anthem Insurance from a mutual insurance company to a stock corporation (the "Plan") in a process referred to as a demutualization. A copy of the Plan is attached hereto as Exhibit "V" and incorporated by reference herein.

139. Under the Plan, Anthem Insurance would organize a new corporation, Anthem. Anthem would be the parent corporation and Anthem Insurance would become a wholly-owned subsidiary of Anthem.

140. To compensate the members of Anthem Insurance for the loss of their mutual membership and ownership interests upon demutualization, the Plan provided that Anthem would issue to Anthem Insurance's former members either shares of Anthem common stock or cash. The Plan provided the members with a right to demutualization compensation in the form of stock or cash at (i) Article I, "Manner of Conversion," Section 1.2(c)(ii), (ii) Article III, "Distribution of Consideration," (iii) Article V, "Form and Amount of Consideration to be Distributed," at Section 5.1, and (iv) Article VI, "Payment of Consideration to Eligible Statutory Members," Section 6.1.

141. In Article XII, "Additional Provisions", at Section 12.1 (c)(ii)(a) thereof, the Plan provided that individuals, like Frieda M. Wilmes, that were holders of certificates of coverage under

group policies issued by CIC after the merger qualified as members of Anthem Insurance eligible to receive demutualization compensation.

142. At Section 12.1(c)(i), the Plan denied to the individuals insured under group policies issued by CMIC before the Merger any right to receive compensation upon the demutualization of Anthem Insurance. This illegal provision of the Plan essentially nullified the pre-existing rights to demutualization compensation under Ohio Insurance Law of employees and retirees insured under CMIC's group policies issued before the Merger.

143. The Anthem stock was to be listed on national stock exchanges and traded publicly.

144. In connection with its demutualization, Anthem Insurance had the Notice of Exemption published in the *Federal Register* on August 3, 2001 (*see* Exhibit "Q") in which Anthem Insurance represented that up to 7,000 employers like the City with group policies covering their employees were entitled to receive Anthem stock.

145. Anthem Insurance demutualized under Indiana law. Indiana's demutualization statutes (*see e.g.*, IC 27-15-2-2(5) and 27-15-5-3(c)(9)) require the converting mutual insurer to inform its members of the nature and amount of compensation each will receive.

146. Wilmes became a member of Associated (later Anthem Insurance) as evidenced by her Certificate of Membership. Other members of the Class similarly became members of Anthem Insurance.

147. As discussed above, the plain language of Section 3.1(B)(3) of PJAM made Plaintiffs and others in the Class the mutual members of Associated (later Anthem Insurance), not their employers.

148. Anthem Insurance had a statutory duty to give notice to Plaintiffs and the Class members informing them of the nature and amount of consideration each was entitled to and would receive upon Anthem Insurance's demutualization.

149. Anthem Insurance failed to provide the Plaintiffs and Class members with any notice of their respective demutualization entitlements, and instead mailed to the City multiple documents in the months before its demutualization.

150. The *Instruction Guide* (attached hereto as Exhibit “W” and incorporated by reference herein) Anthem Insurance provided to the City included a Stock Election Card (Card 3) and a Member Record Card (Card 4). Card 4 provided the City with an estimate of the number of Anthem shares allocated to the City, and by returning Card 3 the City could elect the form of demutualization compensation as between stock and cash.

151. Anthem Insurance also distributed to its members hundreds of pages of written materials in at least five separate documents explaining the details of the demutualization. In the document entitled *Questions and Answers* (attached hereto as Exhibit “X” and incorporated by reference herein) mailed to members in August 2001, Anthem Insurance explained which members were entitled to receive Anthem stock or cash. At page three of the *Questions and Answers*, Anthem Insurance told its members that only 1,000,000 of its 7,500,000 insureds met the requirements to receive stock or cash. At page five, Anthem Insurance informed its members that not all insureds in Ohio would be eligible to receive payment of stock or cash.

152. In the document entitled *Member Information Statement – Part I* (“*MIS-Part I*”) (attached hereto as Exhibit “Y” and incorporated by reference herein) mailed to members in August 2001, Anthem Insurance again explained which members were entitled to receive Anthem stock or cash. At pages 17-18 of the *MIS-Part I*, Anthem Insurance represented that only Statutory Members could vote on the Plan and receive stock or cash. Anthem Insurance further stated that the term “Statutory Member” did not include individual certificate holders under group policies issued by CMIC prior to the 1995 merger. At pages 20-23, Anthem Insurance told its members that a Statutory Member was defined as a “holder of a Policy in force on June 18, 2001.” For group

insurance policies or group health care contracts issued by CMIC prior to the 1995 merger, Anthem Insurance stated that the employer was the “holder” of the policy rather than the individual certificate holders (*i.e.*, the named insureds) under the group policy or contract.

153. The Anthem Defendants may argue that an employer, not its employees, should be entitled to demutualization compensation since the employer typically writes the checks and pays the premiums on a group health insurance policy covering its employees.

154. The Commissioner specifically rejected this same argument in her Order (*see* Exhibit “P” at page 15, paragraph 60 in Part IX, “Consideration of the Comments and Discussion”) when she approved the Anthem Insurance’s demutualization plan:

For example, while an argument can be made by commenters [*sic*] such as Citizens Financial group and Charles Storms that employers who contributed a substantial portion of the premiums for a group policy should receive the consideration from the Conversion, ***such argument is not supported by the Articles of Incorporation, By-Laws, insurance policies or other records of Anthem Insurance.*** (Emphasis supplied.)

155. Indeed, if the Anthem Defendants were to make such an argument, it would be completely contradicted by the testimony of two Anthem officers before the Indiana Insurance Commissioner, as cited by the Superior Court of Hartford, Connecticut at paragraph 37 of its July 26, 2006 decision in *Gold v. Rowland* (attached hereto as Exhibit “Z” and incorporated by reference herein):

[T]wo Anthem Vice Presidents, David Frick and Cynthia Miller, both stated in their testimony at the Demutualization Hearing before the Indiana Commissioner of Insurance on October 2, 2001, that under the By-Laws and Articles of Incorporation of Anthem Insurance, it has always been understood that, in the case of group insurance policies, ***the members of the Company for all purposes are not the employers who procure or pay for their policies, but the individual employees who hold certificates of coverage thereunder, and thus any distribution in the event of a demutualization goes only to them.*** (Emphasis supplied.)

156. On October 29, 2001, the members of Anthem Insurance voted and approved the

Plan. Also on October 29, 2001, Anthem sold 55.2 million shares of its common stock in an initial public offering.

157. The demutualization of Anthem Insurance was completed on November 2, 2001. Subsequently, in late December 2001, Anthem issued and delivered to the former members of Anthem Insurance approximately 48 million shares of Anthem common stock, and paid cash compensation to the members who did not elect to receive Anthem shares in the aggregate amount of \$2.063 billion.

158. In late December 2001, Anthem issued and delivered to the City approximately 870,021 shares of Anthem common stock.

159. Anthem and/or Anthem Insurance did more than merely deliver the approximately 870,021 shares to the City; they made determinations and took actions that included:

- (i) Anthem Insurance determined that the City was entitled to ownership of approximately 870,021 shares of Anthem common stock, not Plaintiffs or the other Class members;
- (ii) Anthem and/or Anthem Insurance caused approximately 870,021 shares to be issued to the City in “book-entry” form (without a stock certificate) and registered the stock in the name of the City on Anthem’s books and records;
- (iii) Anthem and/or Anthem Insurance caused a shareholder account number (a number used to identify a book-entry account in the records of Anthem’s stock transfer agent, EquiServe Trust Company, N.A. (“EquiServe”)) to be provided to the City; and
- (iv) Anthem and/or Anthem Insurance caused the City’s share ownership information to be maintained in a “direct registration system” (a system that electronically facilitates a transfer of shares between Anthem’s books

maintained by EquiServe and the books of broker/dealers serving Anthem's shareholders).

160. Following the demutualization, Anthem placed a detailed set of restrictions on sales or transfers of shares by former members of Anthem Insurance who received and continued to hold 30,000 or more shares of Anthem common stock. Those holding 30,000 or more shares were designated as "Large Holders." For a period of 180 days following the demutualization (*i.e.*, from November 2, 2001 through May 1, 2002, inclusive), Large Holders like the City could sell their shares only in accordance with the provisions of the "Large Holder Sales Program" (the "Program") established by Anthem and Anthem Insurance and administered by EquiServe. From and after May 2, 2002, there were no restrictions on sales or transfers of Anthem common stock by the Large Holders.

161. After the demutualization, Anthem designated the City as a Large Holder. By written notice, Anthem informed the City that it was subject to the Program and that, if the City desired to sell any or all of the approximately 870,021 Anthem shares prior to May 2, 2002, it could only sell such shares through the Program. Anthem also provided the City with a sales authorization form to complete and submit to EquiServe in order to participate in the Program and to start the sales process.

162. By and through the determinations and actions described in Paragraphs One Hundred Fifty-nine (159) through One Hundred Sixty-one (161), inclusive, above Anthem and Anthem Insurance facilitated the City's subsequent sale of approximately 870,021 shares of Anthem common stock.

163. From February through April 2002, the City sold all of the approximately 870,021 shares of Anthem common stock and received net sales proceeds of over \$54.7 million.

164. No member of the Class received Anthem shares from either Anthem or from the

City. The City distributed none of the approximately \$55 million in sales proceeds to any Class member. The City improperly used the proceeds from the sale of the Anthem shares for its own benefit as set forth below.

165. As a direct and proximate result of not receiving the shares of Anthem common stock to which they were entitled, the members of the Class have been damaged as described hereafter.

E. THE CITY SOLD THE ANTHEM SHARES AND SPENT THE PROCEEDS ON NEIGHBORHOOD DEVELOPMENT PROJECTS.

166. As alleged above, the City, the City Council Members and the Mayor sold the Anthem shares generating net proceeds of approximately \$55 million.

167. On or about December 19, 2002, the Mayor signed into law the City's budget approved by the City Council Members for the 2003-2004 biennium, effective as of January 1, 2003 (the City's budget at page 7, describing the use of the demutualization proceeds, is attached hereto as Exhibit "AA" and incorporated by reference herein.)

168. *The Cincinnati Post* reported on that date that City Council had approved the 2003-2004 City budget, and that the Mayor had allowed the City Council Members to decide how to spend the \$55 million in "windfall" proceeds from the sale of the Anthem stock the City had received.

169. The budget adopted by the City Council Members and approved by the Mayor provided that \$53 million of the proceeds would be used for the Neighborhood Investment Program, with \$31.5 million to be spent in 2003 and \$21.5 million in 2004.

170. The remaining \$2 million of the demutualization proceeds was budgeted to match community-led initiatives to improve safety in neighborhoods.

171. On information and belief, the Trustees of CRS made a written request through their legal counsel on or about March 14, 2003 that the City Solicitor take legal action to compel the transfer of at least a portion of the demutualization proceeds to CRS to be held in trust and used for the exclusive benefit of the participants in CRS.

172. On information and belief, on or about March 31, 2003, the City Solicitor refused the Trustees' request to take action to enjoin or otherwise prevent the City from spending the demutualization proceeds on neighborhood development projects instead of contributing it to CRS.

173. On or about April 14, 2003, several of the Trustees of CRS brought a taxpayer suit against the City in the Court of Common Pleas for Hamilton County, Ohio, seeking to enjoin the use of the proceeds for neighborhood development projects and asking the Court to order that a portion of the proceeds be transferred to CRS.

174. On or about May 19, 2003, the City filed a motion to dismiss the taxpayer suit based in part on an erroneous legal opinion dated March 6, 2002, opining that the City was entitled to keep the Anthem shares and had no legal obligation to distribute the shares to Class members or contribute the shares to CRS.

175. On or about September 18, 2003, Judge Myers of the Hamilton County Court of Common Pleas dismissed the taxpayer suit for lack of standing without reaching the merits of the case.

176. On or about July 2, 2004, the Court of Appeals for Hamilton County (First Appellate District) affirmed the dismissal for lack of standing likewise without reaching the merits of the case. In a separate concurrence to the unpublished opinion, Judge Painter wrote:

I concur, but write separately only to emphasize that we are not holding that the retirement system has no claim – only that a taxpayer action is not the proper method to assert it.

177. To date, the City has distributed none of the demutualization proceeds to Class members and contributed none of the proceeds to CRS.

178. As a direct and proximate result of receiving neither the shares Anthem common stock nor the proceeds from the City's sale of such stock to which they were entitled, Plaintiffs and the members of the Class have been damaged as described hereafter.

179. The Claims for Relief asserted hereafter against Defendants are based on alternative theories of liability. The first basis for liability is founded on Plaintiffs and the Class members having obtained the status as mutual members of Associated (later Anthem Insurance) on account of the group health insurance policies originally issued by CIC to the City after the Merger between Associated and CMIC. The First, Second, Third, Fourth and Sixth Claims for Relief are asserted under this first basis of liability. The second basis for liability rests upon the provisions of Ohio Insurance Law that granted to the Plaintiffs and the Class members individual entitlements to compensation in the event of CMIC's demutualization. The Seventh, Eighth, Ninth, Tenth and Thirteenth Claims for Relief are asserted under this second basis for liability. The Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth and Seventeenth Claims for Relief are asserted under both bases of liability.

CLAIMS FOR RELIEF

First Claim for Relief

(Breach of Contract – the Membership Certificate – Asserted Against Anthem Insurance)

180. Plaintiffs reallege and incorporate by reference the allegations set forth in Paragraphs One (1) through One Hundred Seventy-nine (179), inclusive, above as if the same were fully rewritten herein.

181. On or after October 1, 1995, Associated caused Certificates of Membership to be delivered to Wilmes and other members of the Class. These Certificates of Membership constituted written contracts between Associated and Wilmes and the other Class members. Pursuant to the Certificates of Membership, Wilmes and other members of the Class became mutual members of Associated and were given equity rights in the event Associated (later Anthem Insurance) demutualized that entitled them to receive cash and stock compensation in 2001 when Anthem Insurance demutualized.

182. Anthem Insurance breached its contractual obligations under the Certificates of

Membership by paying and distributing to the City 870,021 shares of Anthem common stock in late December of 2001 after Anthem Insurance demutualized, instead of paying and distributing such shares to Frieda M. Wilmes and other members of the Class.

183. Anthem Insurance's breaches of the Certificates of Membership caused the members of the Class, including without limitation Mell, Wilmes, Espel and Matacia, not to receive any of the 870,021 shares of Anthem common stock, nor any of the approximately \$55 million in sales proceeds, to which they were contractually and legally entitled upon the demutualization of Anthem Insurance.

184. As a direct and proximate result of the breaches of the Certificates of Membership by Anthem Insurance, the members of the Class, including without limitation Mell, Wilmes, Espel and Matacia, have been damaged in the aggregate amount of over \$54.7 million as will be determined from the evidence and in accordance with law, and in individual amounts that can be calculated for each Class member, including without limitation Mell, Wilmes, Espel and Matacia, on a class-wide basis.

Second Claim for Relief

(Breach of Contract – PJAM – Asserted Against Anthem Insurance and CIC)

185. Plaintiffs reallege and incorporate by reference the allegations set forth in Paragraphs One (1) through One Hundred Eighty-four (184), inclusive, above as if the same were fully rewritten herein.

186. The PJAM, Article V at Section 5.2, entitled all Class members, as holders of certificates of coverage under group health insurance policies originally issued by CIC to the City after the Merger, to receive an Associated Certificate of Membership. Anthem Insurance and CIC breached their contractual obligations under the PJAM to some members of the Class by failing to provide them with Certificates of Membership in Associated following the Merger.

187. As intended third-party beneficiaries of the PJAM, Plaintiffs and the Class members have standing to bring this claim for breach of contract against Anthem Insurance and CIC, as successor- in- interest to CMIC.

188. The breaches of the PJAM by Anthem Insurance and CIC, and each of them, jointly and severally, caused certain members of the Class, including without limitation Wilmes, Mell, Espel and Matacia, not to receive any of the 870,021 shares of Anthem common stock, nor any of the approximately \$55 million in sales proceeds, to which they were contractually and legally entitled upon the demutualization of Anthem Insurance.

189. As a direct and proximate result of the breaches of the PJAM by Anthem Insurance and CIC, and each of them, jointly and severally, certain members of the Class, including without limitation Wilmes, Mell, Espel and Matacia, have been damaged in the aggregate amount of over \$54.7 million as will be determined from the evidence in accordance with law, and in individual amounts that can be calculated for each Class member, including without limitation Wilmes, Mell, Espel and Matacia, on a class-wide basis.

Third Claim for Relief

(Breach of Contract – Second Amended Articles – Asserted Against Anthem Insurance)

190. Plaintiffs reallege and incorporate by reference the allegations set for the in Paragraphs One (1) through One Hundred Eighty-nine (189), inclusive, above as if the same were fully rewritten herein.

191. The Second Amended Articles, Article VII at Section 7.1(a), provided that Associated's mutual members included all persons, like Wilmes, who were issued Certificates of Membership. The Second Amended Articles, at Section 7.5(a), provided that each holder of a Certificate of Coverage under a CIC group health insurance policy was entitled to receive a Certificate of Membership, like the one received by Wilmes. Section 7.5(a) further provided that

each Certificate of Membership granted to the recipient the same rights in the event of Associated's demutualization as were set forth in Section 8.1 and under the Indiana Insurance Law.

192. The Second Amended Articles, in Article VIII at Section 8.1 thereof, provided that all Associated members, like Frieda M. Wilmes, were entitled to compensation in the form of cash and stock upon Associated's (later Anthem Insurance's) demutualization. The Second Amended Articles, in Article VIII at Section 8.4 thereof, specifically provided that individuals, like Frieda M. Wilmes, who had received a Certificate of Membership in Associated on account of being a holder of a certificate of coverage with respect to a group policy issued by CIC after the merger were entitled upon Associated's (later Anthem Insurance's) demutualization to a distribution in the form of cash and stock.

193. As intended third-party beneficiaries of the several merger agreements and the Second Amended Articles, Plaintiffs and the Class have standing to bring this breach of contract claim against Anthem Insurance.

194. Anthem Insurance breached its contractual obligations under the Second Amended Articles by paying and distributing to the City 870,021 shares of Anthem common stock in late December 2001 after Anthem Insurance demutualized, instead of paying and distributing such shares to Plaintiffs and the Class members. The Class members, not the City, are entitled to the 870,021 shares of Anthem stock by the express provisions of the Second Amended Articles.

195. The breaches of the Second Amended Articles by Anthem Insurance caused the members of the Class, including without limitation Mell, Wilmes, Espel and Mataria, not to receive any of the 870,021 shares of Anthem common stock or the approximately \$55 million in sales proceeds to which each was entitled upon the demutualization of Anthem Insurance.

196. As a direct and proximate result of the breaches of the Second Amended Articles by Anthem Insurance, the members of the Class, including without limitation Mell, Wilmes, Espel and

Matacia, have been damaged in an aggregate amount of over \$54.7 million as will be determined from the evidence in accordance with law, and in individual amounts that can be calculated for each Class member, including without limitation Mell, Wilmes, Espel and Matacia, on a class-wide basis.

Fourth Claim for Relief

(Breach of Contract – Guaranty Policy for Future Groups – Asserted Against Anthem Insurance and the City)

197. Plaintiffs reallege and incorporate by reference the allegations set forth in Paragraphs One (1) through One Hundred Ninety-six (196), inclusive, above as if the same were fully rewritten herein.

198. Following the Merger, Associated issued a Guaranty Policy for Future Groups to the City. In Article IV, “Membership Rights,” of the Guaranty Policy for Future Groups, the City’s insured employees and retirees were granted equity rights as provided in Associated’s Second Amended Articles that entitled them to compensation in the event Associated (later Anthem Insurance) demutualized. Moreover, Article IV expressly provided that the equity rights accrued solely to the City’s insured employees and retirees as members of Associated, whereas the City as the employer did not receive any equity rights.

199. As intended third-party beneficiaries of the Guaranty Policy for Future Groups, the Plaintiffs and the Class members have standing to bring this claim for breach of contract against Anthem Insurance and the City.

200. Anthem Insurance breached its contractual obligations under the Guaranty Policy for Future Groups by failing to distribute 870,021 shares of Anthem common stock to Plaintiffs and the Class members cash and stock as compensation when Anthem Insurance demutualized in 2001. The City breached its contractual obligations under the guaranty Policy for Future Groups by retaining for its own use and benefit (i) 870,021 shares of Anthem common stock that it received in late December of 2001 when Anthem Insurance demutualized, and (ii) the approximately \$55 million in

proceeds from the sale of such Anthem stock in February-April 2002. The City also breached its contractual obligations under the Guaranty Policy for Future Groups by not distributing to the Plaintiffs and the Class members, within a reasonable time after receipt (i) 870,021 shares of Anthem stock or (ii) the approximately \$55 million of proceeds from the sale of such stock.

201. The breaches of the Guaranty Policy for Future Groups by Anthem Insurance and the City caused the members of the Class, including without limitation Mell, Wilmes, Espel and Matacia, not to receive any of the 870,021 shares of Anthem common stock or any of the approximately \$55 million in sales proceeds to which each was entitled upon the demutualization of Anthem Insurance.

202. As a direct and proximate result of the breach of the Guaranty Policy for Future Groups by Anthem Insurance and the City, the members of the Class, including without limitation Mell, Wilmes, Espel and Matacia, have been damaged in an aggregate amount of over \$54.7 million as will be determined from the evidence in accordance with law, and in individual amounts that can be calculated for each Class member, including without limitation Mell, Wilmes, Espel and Matacia, on a class-wide basis.

Fifth Claim for Relief

(Breach of Contract – Plan of Conversion – Asserted Against Anthem and Anthem Insurance)

203. Plaintiffs reallege and incorporate by reference the allegations set forth in Paragraphs One (1) through Two Hundred Two (202), inclusive, above as if the same were fully rewritten herein.

204. Anthem Insurance's Plan of Conversion (the "Plan") from a mutual company to a stock company provided the members of Anthem Insurance with rights to compensation in the form of stock or cash upon the demutualization of Anthem Insurance. Anthem Insurance's mutual members, like Plaintiffs and the Class members, had a right to demutualization compensation in the

event Anthem Insurance demutualized.

205. As intended third-party beneficiaries of the Plan, Plaintiffs and the members of the Class have standing to bring this claim for breach of contract against Anthem and Anthem Insurance.

206. Anthem and Anthem Insurance breached their contractual obligations by not paying or distributing any demutualization compensation to the Class members, but instead by paying and distributing 870,021 shares of Anthem common stock to the City in December 2001 following the demutualization of Anthem Insurance.

207. The breaches of the Plan by Anthem and Anthem Insurance, and each of them, jointly and severally, caused the members of the Class, including without limitation Mell, Wilmes, Espel and Matacia, not to receive any of the 870,021 shares of Anthem common stock or the approximately \$55 million in sales proceeds to which each was entitled upon the demutualization of Anthem Insurance.

208. As a direct and proximate result of the breaches of the Plan by Anthem and Anthem Insurance, and each of them, jointly and severally, the members of the Class, including without limitation Mell, Wilmes, Espel and Matacia, have been damaged in the aggregate amount of over \$54.7 million as will be determined from the evidence in accordance with law, and in individual amounts that can be calculated for each Class member, including without limitation Mell, Wilmes, Espel and Matacia, on a class-wide basis.

Sixth Claim for Relief

(The City's Breaches of Fiduciary Duties)

209. Plaintiffs reallege and incorporate by reference the allegations set forth in Paragraphs One (1) through Two Hundred Eight (208), inclusive, above as if the same were fully rewritten herein.

210. As alleged above, Associated issued the Guaranty Policy for Future Groups to the

City on account of CIC having issued to the City the 1995 Group Contract after the merger.

211. Under the provisions of the Guaranty Policy for Future Groups, the insured active and retired employees of the City became members of Associated (later Anthem Insurance), not their employer, the City. Therefore, Plaintiffs and the members of the Class became mutual members of Anthem Insurance under the terms of the Guaranty Policy for Future Groups.

212. In Article IV of the Guaranty Policy for Future Groups, the City's insured employees and retirees as members of Anthem Insurance were granted equity rights in Anthem Insurance in the event of a demutualization, not their employer, the City. In fact, the relevant provision expressly denied any equity rights to the City. Therefore, the Plaintiffs and the members of the Class were entitled to compensation in the form of stock and cash when Anthem Insurance demutualized in 2001 under the Guaranty Policy for Future Groups.

213. The Guaranty Policy for Future Groups also contained a provision that made the City the fiduciary agent of its insured active employees and retirees.

214. The Guaranty Policy for Future Groups further provided that it was governed by Ohio law.

215. Under Ohio law, when a fiduciary duty is memorialized in a written contract, any breach of the fiduciary duty also constitutes a breach of the written contract.

216. As a fiduciary, the City was obligated to distribute (within a reasonable amount of time after receipt) the 870,021 shares of Anthem common stock to Plaintiffs and the other Class members. By retaining, converting and misappropriating 870,021 shares of Anthem common stock and approximately \$55 million in sales proceeds, the City breached its fiduciary duties of due care, loyalty, good faith and fair dealing owed to Plaintiffs and the other Class members.

217. The City's breach of its fiduciary duties caused the members of the Class, including without limitation Mell, Wilmes, Espel and Matacia, not to receive any of the shares of Anthem

common stock or proceeds from the sale therefrom to which each was entitled.

218. As a direct and proximate result of the City having breached its fiduciary duties, the members of the Class, including without limitation Mell, Wilmes, Espel and Matacia, have been damaged in the aggregate amount of over \$54.7 million to be determined from the evidence in accordance with law, and in individual amounts that can be calculated for each class member, including without limitation Mell, Wilmes, Espel and Matacia, on a class-wide basis.

Seventh Claim for Relief

(Breach of Contract – the Group Policy)

219. Plaintiffs reallege and incorporate by reference the allegations set forth in Paragraphs One (1) through Two Hundred Eighteen (218), inclusive, above as if the same were fully rewritten herein.

220. Sometime prior to and/or during 1995, CMIC (later Anthem/CIC) and the City entered into a written contract of insurance, the Group Policy. The City procured the Group Policy to provide a direct benefit (group health insurance coverage) to the Class members. Therefore, the Class members were intended and covered third-party beneficiaries of the Group Policy between Anthem/CIC and the City at the time Anthem Insurance demutualized in 2001.

221. Ohio insurance law, including without limitation the provisions of R.C. 3913.20(B), 3913.22(A) and 3913.22(D), became a part of the written health insurance contract, the Group Policy, between the City and CMIC (later Anthem/CIC). These three Ohio statutes determined both the City's and the Class members' entitlement to stock compensation in the event of a demutualization of CMIC. In the event CMIC demutualized, CMIC had a contractual and legal duty under R.C. 3913.22(A) to compensate the *policyholders* (the insured Class members). In addition, the named insureds under the Group Policy were considered to be *members* of CMIC for demutualization purposes by operation of R.C. 3913.22(D). Conversely, the City was *not* the

member of CMIC for demutualization purposes and had no contractual or legal entitlement to stock compensation.

222. Upon demutualization, CMIC also had a contractual duty under R.C. 3913.22(C) to issue and deliver the stock compensation to the City as the owner of the Group Policy. To accomplish the purposes of R.C. 3913.22(A), when the City received such stock compensation, it had a contractual duty implied by law under R.C. 3913.22(C) to distribute any CMIC stock received to the Class members.

223. Associated (later Anthem Insurance) and CMIC (later CIC) entered into and executed PJAM and the Merger Agreement. As a member of CMIC at the time PJAM and the Merger Agreement were entered into, the City was an intended third-party beneficiary of PJAM and the Merger Agreement. PJAM and the Merger Agreement specifically provided benefits to the former members of CMIC, including the City. PJAM and the Merger Agreement conferred certain immediate benefits upon the City, such as membership in Associated and voting rights. PJAM and the Merger Agreement also conferred upon the City various future benefits, including rights to compensation in the event of Associated's (later Anthem Insurance's) demutualization. The rights granted to the City under PJAM and the Merger Agreement were intended and specified to be only equivalent to the rights that the City had under Ohio law as a member of CMIC prior to the Merger.

224. The City's demutualization rights were set forth in multiple documents (collectively referred to as "Merger Documents") prepared to effectuate the Merger, including without limitation (i) Article III, Section 3.1(B)(3) of PJAM, (ii) Article VIII, Section 8.3 of the Second Amended Articles, (iii) Article III, Section 3.1.B(ii)(c) of the Merger Agreement, (iv) the *Information Circular*, and (v) Article IV of the Guaranty Policy. Such rights constitute the City's contractual rights in the event Anthem Insurance demutualized.

225. The Second Amended Articles and the Merger Agreement both specifically referred

to and incorporated by reference the relevant provisions of Ohio insurance law governing mutual insurance companies and their demutualizations. The term “Ohio Insurance Law” was defined in the “Definitions Appendix” of the Merger Agreement (*see* Exhibit “T”) to include the provisions of Title 39 of the Ohio Revised Code. Thus, the terms and requirements of R.C. 3913.20(B), 3913.22(A), 3913.22(D) and 3913.22(C) were expressly incorporated into the provisions of the Second Amended Articles and the Merger Agreement. Ohio insurance law governing demutualizations was also incorporated into PJAM and the Guaranty Policy for the reason that both contracts specified that demutualization rights were provided in the Second Amended Articles.

226. As intended third-party beneficiaries of the Group Policy, the named Plaintiffs and the Class members have standing to bring this claim for breach of contract against the City and Anthem/CIC (as successor-in-interest to CMIC). The Merger Agreement is relevant to Plaintiffs’ claim for breach of the Group Policy because the City received rights to demutualization compensation under the Merger Agreement limited to the equivalent rights the City had received in the Group Policy pursuant to the 1995 Merger Agreement. The Merger Agreement did not provide the City with greater rights than it possessed under the Group Policy immediately prior to the Merger.

227. The City breached the Group Policy by retaining for its own use and benefit (i) approximately 870,021 shares of Anthem common stock that it received in late December 2001 when Anthem Insurance demutualized, and (ii) the approximately \$55 million in net proceeds from the sale of such Anthem stock in February-April 2002.

228. The City breached the contract by not distributing to Plaintiffs and the Class members, within a reasonable time after receipt (i) approximately 870,021 shares of Anthem stock, or (ii) the approximately \$55 million of net proceeds from the sale of such stock.

229. The Class members, not the City, are entitled to the approximately 870,021 shares as

policyholders because the provisions of R.C. 3913.20(B), 3913.22(A) and 3913.22(D) were incorporated by operation of law into the Group Policy as implied terms of that insurance contract.

230. The breach of the Group Policy by the City caused the members of the Class, including without limitation Mell, Wilmes, Espel and Matacia, not to receive any of the approximately 870,021 shares of Anthem common stock or any of the approximately \$55 million in sales proceeds to which each was entitled upon the demutualization of Anthem Insurance.

231. As a direct and proximate result of the breach of the Group Policy by the City, the members of the Class, including without limitation Mell, Wilmes, Espel and Matacia, have been damaged in an aggregate amount of over \$54.7 million as will be determined from the evidence in accordance with law, and in individual amounts that can be calculated for each Class member, including without limitation Mell, Wilmes, Espel and Matacia, on a class-wide basis.

Eighth Claim for Relief
(Breach of Contract – PJAM)

232. Plaintiffs reallege and incorporate by reference the allegations set forth in Paragraphs One (1) through Two Hundred Thirty-one (231), inclusive, above as if the same were fully rewritten herein.

233. Associated (later Anthem Insurance) and CMIC (later CIC) entered into and executed PJAM. As a member of CMIC at the time PJAM was entered into, the City was an intended third-party beneficiary of PJAM. PJAM specifically provided benefits to the former members of CMIC, including the City. PJAM conferred certain immediate benefits upon the City, such as voting rights. PJAM also conferred upon the City various future benefits, including rights in the event of Associated's (later Anthem Insurance's) liquidation, merger or consolidation.

234. The demutualization rights, if any, granted to the City in Article III, Section 3.1(B)(3) of PJAM were intended and specified to be only equivalent to the rights it would have had if Associated, instead of CMIC, had issued the Group Policy directly to the City. PJAM further

specified that the City's demutualization rights included the full value of its interests in CMIC immediately prior to the Merger.

235. If Associated had issued the Group Policy, then the City had no right or entitlement to compensation in the form of Anthem common stock upon the demutualization of Anthem Insurance. Under Associated's (later Anthem Insurance's) membership rules, employers that sponsored group health insurance policies covering their employees were not members of the mutual insurance company. Under Associated's (later Anthem Insurance's) membership rules, the employees were the mutual members. Therefore, employers had no right or entitlement as mutual members under Indiana insurance law to compensation in the event Associated (later Anthem Insurance) demutualized.

236. Moreover, the value of the City's interest in the event CMIC had demutualized immediately prior to the Merger was zero. The value was zero for the reason that under the applicable Ohio demutualization statute the Plaintiffs and the other Class members were the *policyholders* (defined as the persons insured or members of the insured group of persons) entitled to stock compensation in the event CMIC demutualized. The City had no entitlement under Ohio law to demutualization compensation.

237. Section 3.1(B)(3) of PJAM also specified that the demutualization rights, if any, of the City were set forth in Associated's Second Amended Articles (*see* Exhibit "F"). Article VIII, Section 8.3 of the Second Amended Articles, provided that upon Associated's (later Anthem Insurance's) demutualization, the City was entitled to the same value calculated under Ohio law as though a demutualization of CMIC had occurred immediately prior to the Merger. The value to the City was zero since the Plaintiffs and other Class members were the *policyholders* entitled to stock compensation in the event CMIC had demutualized immediately prior to the Merger.

238. Plaintiffs and the other Class members were also intended third-party beneficiaries of

PJAM. PJAM required both Associated and CIC to guarantee and assume the health insurance coverage to the Plaintiffs and other Class Member in place immediately prior to the Merger under the Group Policy then maintained by and between CMIC and the City. PJAM required Associated to issue a Guaranty Policy and CIC to provide an assumption certificate to the City in order to safeguard CMIC's insurance obligations to Plaintiffs and other Class members.

239. Pursuant to Article III, Section 3.1(B)(3) of PJAM, Associated and CMIC also provided to Plaintiffs and the Class members rights in the event Associated (later Anthem Insurance) subsequently demutualized. Such rights were specified and intended to be equivalent to the demutualization rights that would result had the Group Policy been issued directly by Associated to the City. If Associated had issued the Group Policy, then Associated's membership rules (and not the rules of CMIC) would apply to determine who were members of the mutual company. Under Associated's rules, the Plaintiffs and other Class members were the mutual members, not their employer. The applicable Indiana demutualization statute required payment of demutualization compensation to the mutual members. Therefore, Plaintiffs and the other Class members were entitled to compensation when Anthem Insurance (Associated's successor) demutualized because the City had no entitlement to demutualization compensation.

240. As intended third-party beneficiaries of PJAM, Plaintiffs and the Class members have standing to bring this claim for breach of contract against Anthem, Anthem Insurance and CIC, as successors-in-interest to CMIC.

241. Anthem, Anthem Insurance and CIC breached PJAM by paying and distributing to the City approximately 870,021 shares of Anthem common stock in late December 2001 after Anthem Insurance demutualized, instead of distributing such shares to Plaintiffs and the Class members.

242. The breaches of PJAM by the Anthem Defendants, and each of them, jointly and

severally, caused the members of the Class, including without limitation Mell, Wilmes, Espel and Matacia, not to receive any of the approximately 870,021 shares of Anthem common stock, nor any of the approximately \$55 million in sales proceeds, to which they were contractually and legally entitled upon the demutualization of Anthem Insurance.

243. As a direct and proximate result of the breaches of PJAM by the Anthem Defendants, and each of them, jointly and severally, the members of the Class, including without limitation Mell, Wilmes, Espel and Matacia, have been damaged in the aggregate amount of over \$54.7 million as will be determined from the evidence in accordance with law, and in individual amounts that can be calculated for each Class member, including without limitation Mell, Wilmes, Espel and Matacia, on a class-wide basis.

Ninth Claim for Relief
(Breach of Contract – the Guaranty Policy for Current Groups)

244. Plaintiffs reallege and incorporate by reference the allegations set forth in Paragraphs One (1) through Two Hundred Forty-three (243), inclusive, above as if the same were fully rewritten herein.

245. The Guaranty Policy for Current Groups provided specific and intended benefits to Plaintiffs and the other Class members. Upon the occurrence of certain “triggering” events, Anthem agreed to assume the health insurance coverage to Plaintiffs and other Class members in place immediately prior to the Merger under the Group Policy then maintained by and between CMIC and the City. Therefore, Plaintiffs and the other Class members were intended third-party beneficiaries of the Guaranty Policy for Current Groups.

246. At Article IV of the Guaranty Policy for Current Groups, the City was improperly granted equity rights in the event of Associated’s demutualization as provided in Associated’s Second Amended Articles. Article VIII, Section 8.3 of the Second Amended Articles provided that upon Associated’s (later Anthem Insurance’s) demutualization, the City was entitled to the same

value calculated under Ohio law as though a demutualization of CMIC had occurred immediately prior to the Merger. The value to the City was zero since Plaintiffs and the other Class members were the *policyholders* (defined as the persons insured or members of the insured group of persons) entitled to stock compensation in the event CMIC had demutualized immediately prior to the Merger.

247. The equity rights, if any, granted to the City in Article IV of the Guaranty Policy for Current Groups were also specified as intended to be equivalent to the rights the City would have had if Associated, instead of CMIC, had issued the Group Policy directly to the City.

248. If Associated had issued the Group Policy, then the City had no right or entitlement to compensation in the form of Anthem common stock upon the demutualization of Anthem Insurance. Under Associated's (later Anthem Insurance's) membership rules, employers that sponsored group health insurance policies covering their employees were not members of the mutual insurance company. Under Associated's (later Anthem Insurance's) membership rules, the employees were the mutual members. Therefore, employers had no right or entitlement as mutual members under Indiana insurance law to compensation in the event Associated (later Anthem Insurance) demutualized.

249. By its express terms, Article IV of the Guaranty Policy for Current Groups provided Plaintiffs and the Class members equity rights in the event Associated (later Anthem Insurance) later demutualized. Such equity rights were specified and intended to be equivalent to the demutualization rights that would result had the Group Policy been issued directly by Associated to the City. If Associated had issued the Group Policy, then Associated's membership rules (and not the rules of CMIC) would apply to determine who were members of the mutual company. Under Associated's rules, Plaintiffs and the other Class members were the mutual members, not their employers. The applicable Indiana demutualization statute required payment of demutualization

compensation to the mutual members. Therefore, Plaintiffs and the other Class members were entitled to compensation when Anthem Insurance (Associated's successor) demutualized, and the City had no entitlement to demutualization compensation.

250. As intended third-party beneficiaries of the Guaranty Policy for Current Groups, Plaintiffs and the Class members have standing to bring this claim for breach of contract against the Anthem Defendants and the City.

251. The Anthem Defendants breached the Guaranty Policy for Current Groups by paying and distributing to the City approximately 870,021 shares of Anthem common stock in late December 2001 after Anthem Insurance demutualized, instead of distributing such shares to Plaintiffs and the Class members.

252. The City breached the Guaranty Policy for Current Groups by retaining approximately 870,021 shares of Anthem common stock it received in late December 2001 and by not distributing any of the approximately 870,021 Anthem shares to Plaintiffs and the Class members.

253. The City also breached the Guaranty Policy for Current Groups by selling approximately 870,021 Anthem shares in February-April 2002 and by failing to distribute any of the approximately \$55 million in sales proceeds therefrom to Plaintiffs and the Class members.

254. The foregoing breaches of the Guaranty Policy for Current Groups by the Anthem Defendants and the City, and each of them, jointly and severally, caused the members of the Class, including without limitation Mell, Wilmes, Espel and Mataria, not to receive any of the approximately 870,021 shares of Anthem common stock or the approximately \$55 million in sales proceeds to which each was entitled upon the demutualization of Anthem Insurance.

255. As a direct and proximate result of the breaches of the Guaranty Policy for Current Groups by the Anthem Defendants and the City, and each of them, jointly and severally, the

members of the Class, including without limitation Mell, Wilmes, Espel and Matacia, have been damaged in the aggregate amount of over \$54.7 million as will be determined from the evidence in accordance with law, and in individual amounts that can be calculated for each Class member, including without limitation Mell, Wilmes, Espel and Matacia, on a class-wide basis.

Tenth Claim for Relief
(Breach of Contract – the Merger Agreement)

256. Plaintiffs reallege and incorporate by reference the allegations set forth in Paragraphs One (1) through Two Hundred Fifty-five (255), inclusive, above as if the same were fully rewritten herein.

257. As alleged above, Associated (later Anthem Insurance) and CMIC (later CIC) entered into a written contract, the Merger Agreement. The Merger Agreement provided several direct benefits to Class members. Pursuant to Section 3.1.B.(i), CIC issued an assumption certificate to the City for the Group Policy and agreed to provide the same health insurance coverage to Class members as had been in place immediately prior to the Merger.

258. Pursuant to Section 3.1.B.(ii)(b) of the Merger Agreement, Associated issued the Guaranty Policy to the City which guaranteed the health insurance coverage to Class members under the Group Policy assumed by CIC.

259. Plaintiffs and the other Class members, as the named insureds or group of named insureds under the Group Policy, were intended third-party beneficiaries of the Merger Agreement between Associated and CMIC.

260. The rights granted to the City under the Merger Agreement were intended and specified to be equivalent only to the rights the City had under Ohio law prior to the Merger.

261. As intended third-party beneficiaries of the Merger Agreement, Plaintiffs and the Class members have standing to bring this claim for breach of contract against Anthem, Anthem Insurance and CIC, as successors-in-interest to CMIC.

262. Anthem, Anthem Insurance and CIC breached the Merger Agreement by paying and distributing to the City approximately 870,021 shares of Anthem common stock in late December 2001 after Anthem Insurance demutualized, instead of distributing such shares to Plaintiffs and the Class members. The Class members, not the City, are entitled to approximately 870,021 Anthem shares as *policyholders* by the express terms of the Merger Agreement.

263. The breaches of the Merger Agreement by Anthem, Anthem Insurance and CIC, and each of them, jointly and severally, caused the members of the Class, including without limitation Mell, Wilmes, Espel and Matacia, not to receive any of the approximately 870,021 shares of Anthem common stock or the approximately \$55 million in sales proceeds to which each was entitled upon the demutualization of Anthem Insurance.

264. As a direct and proximate result of the breaches of the Merger Agreement by Anthem, Anthem Insurance and CIC, and each of them, jointly and severally, the members of the Class, including without limitation Mell, Wilmes, Espel and Matacia, have been damaged in an aggregate amount of over \$54.7 million as will be determined from the evidence in accordance with law, and in individual amounts that can be calculated for each Class member, including without limitation Mell, Wilmes, Espel and Matacia, on a class-wide basis.

Eleventh Claim for Relief
(Conversion and Misappropriation)

265. Plaintiffs reallege and incorporate by reference the allegations set forth in Paragraphs One (1) through Two Hundred Sixty-four (264), inclusive, above as if the same were fully rewritten herein.

266. Without legal or contractual justification, right or entitlement, the City converted and misappropriated approximately 870,021 shares of Anthem stock and the proceeds from the sale of such stock for its own improper, unauthorized and unjustified uses. This stock and these funds were entrusted to the City for the benefit and welfare of the employees and/or retirees who were named

insureds or members of a group of named insureds under the Group Policy. The City Defendants, and each of them, jointly and severally, have committed misfeasance and malfeasance in connection with their duties and responsibilities to Plaintiffs and the Class members.

267. As a direct and proximate result of the wrongful actions by the City Defendants, and each of them, jointly and severally, the members of the Plaintiff Class, including without limitation Mell, Wilmes, Espel and Matacia, have suffered damages in an aggregate amount of over \$54.7 million as will be determined from the evidence in accordance with law, and in individual amounts that can be calculated for each Class member, including without limitation Mell, Wilmes, Espel and Matacia, on a class-wide basis.

Twelvth Claim for Relief
(Aiding and Abetting Conversion)

268. Plaintiffs reallege and incorporate by reference the allegations set forth in Paragraphs One (1) through Two Hundred Sixty-seven (267), inclusive, above as if the same were fully rewritten herein.

269. Anthem, Anthem Insurance and/or CIC made various representations, individually and jointly, and provided information to the City that led it to act as though it was entitled to the approximately 870,021 shares of Anthem common stock as demutualization compensation. The representations made to and the information provided by Anthem, Anthem Insurance and/or CIC to the City were erroneous since the Class members, not their employer, were entitled to approximately 870,021 Anthem shares.

270. The Anthem Defendants, individually and jointly, took actions or directed their agents to take actions that facilitated the sales of approximately 870,021 Anthem shares by the City in February-April 2002.

271. Based on erroneous representations and information received from Anthem, Anthem Insurance and/or CIC, the City acted as though it were entitled to the approximately 870,021

Anthem shares by selling the shares and retaining the approximately \$55 million in sales proceeds.

272. The City Defendants converted and misappropriated approximately 870,021 Anthem shares and the approximately \$55 million in sales proceeds by not distributing to or among the Class members any of the shares or sales proceeds.

273. By aiding and abetting the City Defendants in the conversion and misappropriation of approximately 870,021 Anthem shares and the approximately \$55 million in sales proceeds, Anthem, Anthem Insurance and/or CIC caused the members of the Class, including without limitation Mell, Wilmes, Espel and Matacia, not to receive any of the approximately 870,021 shares of Anthem common stock or the approximately \$55 million in sales proceeds to which they were entitled upon the demutualization of Anthem Insurance.

274. As a direct and proximate result of Anthem, Anthem Insurance and/or CIC having aided and abetted the City Defendants in the conversion and/or misappropriation of approximately 870,021 Anthem shares, the members of the Class, including without limitation Mell, Wilmes, Espel and Matacia, have been damaged in the aggregate amount of over \$54.7 million as will be determined from the evidence in accordance with law, and in individual amounts that can be calculated for each Class member, including without limitation Mell, Wilmes, Espel and Matacia, on a class-wide basis.

Thirteenth Claim for Relief
(The City's Breaches of Fiduciary Duties)

275. Plaintiffs reallege and incorporate by reference the allegations set forth in Paragraphs One (1) through Two Hundred Seventy-four (274), inclusive, above as if the same were fully rewritten herein.

276. In or after April 1997, Anthem Insurance issued a Guaranty Policy for Current Groups to the City in connection with Associated's merger with CMIC.

277. Under the Guaranty Policy for Current Groups, Anthem Insurance guaranteed health

insurance coverage to Mell, Wilmes, Espel and Mataria, and to the other members of the Class, under the Group Policy assumed by CIC in connection with the Merger. The Guaranty Policy for Current Groups also gave the City certain membership rights in Anthem Insurance, among which purported to be equity rights in the event of Anthem Insurances's demutualization:

Such equity rights are intended to be equivalent to the rights which [the City] would have as a member under an [Anthem Insurance] policy if [Anthem Insurance], rather than [CIC], had issued the [Group Policy], and shall accrue solely to the [City].

278. The Guaranty Policy for Future Groups also provided that the “[*Anthem Insurance*] Member [the City] is the fiduciary agent of the Covered Persons [the Class members] hereunder.” (Emphasis supplied.)

279. The Guaranty Policy for Future Groups further provided that it was governed by Ohio law: “The parties to this Policy agree it will be subject to *Ohio law*.” (Emphasis supplied.)

280. Under Ohio law, when a fiduciary duty is memorialized in a written contract, any breach of the fiduciary duty also constitutes a breach of the written contract.

281. Pursuant to the Guaranty Policy for Future Groups, the City agreed to serve as fiduciary to the Class members. The Guaranty Policy for Future Groups also required the City to fulfill its fiduciary duties to Class members under Ohio law, including strictly and faithfully adhering to the provisions and requirements of R.C. 3913.20(B), 3913.22(A), 3913.22(C) and 3913.22(D) that were explicitly incorporated into the Guaranty Policy and determined the City's entitlement to stock in the event of a demutualization of Anthem Insurance.

282. The City owed Plaintiffs and the other Class members, as the named insureds and members of the group of named insureds under the Group Policy, the fiduciary duties of due care, loyalty, good faith and fair dealing, deriving from its position of trust, Ohio law and the Guaranty Policy for Future Groups, in dealing with their rights to stock compensation arising from Anthem Insurance's demutualization.

283. Pursuant to Section 3.1.B.(ii)(c) of the Merger Agreement and the applicable Ohio insurance statutes governing demutualizations, Plaintiffs and the Class members were entitled to stock compensation, but the City had no right to stock compensation, in the event Anthem Insurance demutualized.

284. As a fiduciary, the City was obligated to distribute (within a reasonable amount of time after receipt) the Anthem stock to Plaintiffs and the other Class members named as the insureds or members of the group of named insureds under the Group Policy. By retaining, converting and misappropriating approximately 870,021 shares of Anthem common stock and the approximately \$55 million in sales proceeds, the City breached its fiduciary duties of due care, loyalty, good faith and fair dealing owed to Plaintiffs and the other Class members.

285. The City's breach of its fiduciary duties caused the members of the Class, including without limitation Mell, Wilmes, Espel and Matacia, not to receive any of the shares of Anthem common stock or proceeds from the sale therefrom to which each was entitled.

286. As a direct and proximate result of the City having breached its fiduciary duties, the members of the Class, including without limitation Mell, Wilmes, Espel and Matacia, have been damaged in the aggregate amount of over \$54.7 million to be determined from the evidence in accordance with law, and in individual amounts that can be calculated for each class member, including without limitation Mell, Wilmes, Espel and Matacia, on a class-wide basis.

Fourteenth Claim for Relief
(Aiding and Abetting the City's Breach of Fiduciary Duties)

287. Plaintiffs reallege and incorporate by reference the allegations set forth in Paragraphs One (1) through Two Hundred Eighty-six (286), inclusive, above as if the same were fully rewritten herein.

288. Anthem, Anthem Insurance and/or CIC made various representations, individually and jointly, and provided information to the City that led it to act as though it was entitled to

approximately 870,021 shares of Anthem Common stock as demutualization compensation. The representations made to and the information provided by Anthem, Anthem Insurance and/or CIC to the City were erroneous since the Class members, not their employer, were entitled to the approximately 870,021 Anthem shares.

289. Anthem, Anthem Insurance and/or CIC, individually and jointly, took actions or directed their agents to take actions that facilitated the sales of approximately 870,021 Anthem shares by the City in February-April 2002.

290. Based on erroneous representations and information received from Anthem, Anthem Insurance and/or CIC, the City acted as though it was entitled to the approximately 870,021 Anthem shares, then sold the shares and retained the approximately \$55 million in sales proceeds therefrom.

291. The City breached its fiduciary duties to the Class members by not distributing to and among the Class members approximately 870,021 Anthem shares and by not distributing to and among the Class members any of the approximately \$55 million in sales proceeds.

292. By aiding and abetting the City's breaches of its fiduciary duties to the members of the Class, Anthem, Anthem Insurance and/or CIC caused the members of the Class, including without limitation, Mell, Wilmes, Espel and Matacia, not to receive any of the approximately 870,021 shares of Anthem common stock or any of the approximately \$55 million in sales proceeds to which each was entitled upon the demutualization of Anthem Insurance.

293. As a direct and proximate result of Anthem, Anthem Insurance and/or CIC having aided and abetted the City's breaches of its fiduciary duties, the members of the Class, including without limitation Mell, Wilmes, Espel and Matacia, have been damaged in the aggregate amount of over \$54.7 million as will be determined from the evidence in accordance with law, and in individual amounts that can be calculated for each Class member, including without limitation Mell, Wilmes, Espel and Matacia, on a class-wide basis.

Fourteenth Claim for Relief
(Anthem Insurance's Breach of Fiduciary Duties)

294. Plaintiffs reallege and incorporate by reference the allegations set forth in Paragraphs One (1) through Two Hundred Ninety-three (293), inclusive, above as if the same were fully rewritten herein.

295. Plaintiffs' and the Class members' entitlement to stock compensation upon the demutualization of Anthem Insurance constituted an equity right of membership or other right of ownership as provided in R.C. 3913.22(D).

296. As a mutual insurer, Anthem Insurance owed fiduciary duties to its members and those individuals with ownership rights as provided in R.C. 3913.22(D) when dealing with them as owners as opposed to insureds.

297. Anthem Insurance breached its fiduciary duties to Plaintiffs and to the Class members by failing to inform them of their entitlement to demutualization compensation. Anthem Insurance also breached its fiduciary duties to Plaintiffs and to the Class members by failing to inform them of the form of compensation to which each was entitled and the approximate value thereof.

298. Anthem Insurance breached its fiduciary duties to Plaintiffs and to the Class members by making representations to and informing the City that approximately 870,021 shares of Anthem common stock was owed to the City as demutualization compensation. The representations and information Anthem Insurance provided to the City led it to act as though it were entitled to the approximately 870,021 Anthem shares.

299. Anthem Insurance breached its fiduciary duties to Plaintiffs and to the Class members by paying and distributing to the City approximately 870,021 shares of Anthem common stock in late December 2001 after Anthem Insurance demutualized, instead of distributing such shares to Plaintiffs and the Class members.

300. The foregoing breaches of fiduciary duties by Anthem Insurance caused the members

of the Class, including without limitation Mell, Wilmes, Espel and Matacia, not to receive any of the approximately 870,021 shares of Anthem common stock or any of the approximately \$55 million in sales proceeds to which each was entitled upon the demutualization of Anthem Insurance.

301. As a direct and proximate result of the foregoing breaches of fiduciary duties by Anthem Insurance, the members of the Class, including without limitation Mell, Wilmes, Espel and Matacia, have been damaged in the aggregate amount of over \$54.7 million as will be determined from the evidence in accordance with law, and in individual amounts that can be calculated for each Class member, including without limitation Mell, Wilmes, Espel and Matacia, on a class-wide basis.

Sixteenth Claim for Relief
(Breach of Agency Agreement)

302. Plaintiffs reallege and incorporate by reference the allegations set forth in Paragraphs One (1) through Three Hundred One (301), inclusive, above as if the same were fully rewritten herein.

303. In 2001, the City maintained the Group Policy in its capacity as the employer of Plaintiffs and the other active and retired employees comprising the Class members. Under Ohio law, an employer is deemed to be the agent of the persons insured under a group policy of insurance procured by the employer to cover its employees. Therefore, an agency relationship was formed between the City and the Class members with regard to the Group Policy.

304. As agent for the members of the Class, the City had a binding duty to distribute approximately 870,021 shares of Anthem common stock received in late December 2001 (within a reasonable time after receipt) to and among the Class members.

305. By failing to distribute the Anthem stock or the approximately \$55 million in sales proceeds to the Class members, the City breached its duties owed to Mell, Wilmes, Espel, Matacia and the other Class members as their agent.

306. Having breached its agency duties, the City caused the members of the Class,

including without limitation Mell, Wilmes, Espel and Matacia, not to receive any of the approximately 870,021 shares of Anthem common stock nor any of the approximately \$55 million in sales proceeds to which each was entitled upon the demutualization of Anthem Insurance.

307. As a direct and proximate result of the City having breached its agency duties, obligations and agreement, the members of the Class, including without limitation Mell, Wilmes, Espel and Matacia, have been damaged in the aggregate amount of over \$54.7 million to be determined from the evidence in accordance with law, and in individual amounts that can be calculated for each class member, including without limitation Mell, Wilmes, Espel and Matacia, on a class-wide basis.

Seventeenth Claim for Relief
(Concealment/Fraudulent Misrepresentation/Constructive Fraud)

308. Plaintiffs reallege and incorporate by reference the allegations set forth in Paragraphs One (1) through Three Hundred Seven (307), inclusive, above as if the same were fully rewritten herein.

309. As alleged above, the Anthem Defendants and the City concealed from Plaintiffs and the other Class members their respective entitlements to demutualization compensation in violation of their duties of disclosure.

310. Further as alleged above, the Anthem Defendants also made materially false factual representations to the City concerning its entitlement to compensation in the event Anthem Insurance converted from a mutual insurer to a stock corporation by means of a demutualization transaction.

311. At the time the Anthem Defendants and the City concealed material information from Plaintiffs and other Class members and made materially false factual representations to the City, the Anthem Defendants, and each of them, knew of the falsity of these representations given the clear requirements of the Ohio demutualization statutes and their incorporation into the Group Policy,

Merger agreements, documents and related materials. Alternatively, the Anthem Defendants, and each of them, made these materially false factual representations with such utter disregard and recklessness as to whether they were true or false that knowledge of their falsity may be inferred to the Anthem Defendants, and each of them.

312. The Anthem Defendants made such materially false factual representations to Plaintiffs and to the City with the intent of misleading the City and its insured employees and retirees into relying on such representations.

313. Plaintiffs and the City justifiably relied on the materially false factual representations made by the Anthem Defendants, and treated the approximately 870,021 shares of Anthem common stock as the City's property to the exclusion of the Plaintiffs' and other Class members' entitlement to stock compensation.

314. Plaintiffs and the other Class members have been injured as the proximate result of the Anthem Defendants' and the City's intentional concealment and by the City's reliance on the materially false factual misrepresentations made by the Anthem Defendants.

315. The concealment and fraudulent misrepresentations made by the Anthem Defendants and the City, and each of them, jointly and severally, caused the members of the Class, including without limitation Mell, Wilmes, Espel and Matacia, not to receive any of the approximately 870,021 shares of Anthem common stock, nor any of the approximately \$55 million in sales proceeds, to which they were contractually and legally entitled as a result of the demutualization of Anthem Insurance.

316. As a direct and proximate result of the concealment, fraudulent misrepresentations and constructive fraud committed by the Anthem Defendants and the City, and each of them, jointly and severally, the members of the Class, including without limitation Mell, Wilmes, Espel and Matacia, have been damaged in the aggregate amount of over \$54.7 million as will be determined by

the evidence in accordance with law, and in individual amounts that can be calculated for each Class member, including without limitation Mell, Wilmes, Espel and Matacia, on a class-wide basis.

WHEREFORE, Plaintiffs, Mell, Wilmes, Espel and Matacia, on behalf of themselves and the unnamed members of the Class, hereby demand judgment in their favor against Defendants, the City, the City Council Members, the Mayor, Anthem, Anthem Insurance and CIC, and each of them, jointly and severally, and pray that the Court:

1. Issue an Order certifying the case as a class action, pursuant to Rules 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure, and certifying the Class as alleged and defined herein.

2. Order the City to provide the Class members with an accounting of the Anthem shares sold and the net proceeds received from the stock sale(s).

3. Modify and/or reform the provisions of the Merger Agreement, PJAM, Anthem Insurance's Articles of Incorporation, Anthem Insurance's Amended By-Laws, the Group Policy, the Guaranty Policy for Current Groups and the Plan of Conversion to comply with and conform to Ohio law, including without limitation the provisions of R.C. 3913.20(B), 3913.22(A) and 3913.22(D), to reflect Plaintiffs' membership interests for demutualization purposes in CMIC immediately prior to the 1995 Merger, and their entitlement to stock compensation as CMIC policyholders under policies of group health insurance in the event Anthem Insurance demutualized.

4. Order Anthem (n/k/a WellPoint) to specifically perform its obligations under Ohio insurance law and under the relevant agreements between its predecessors-in-interest and the City, and thereupon issue, distribute and deliver approximately 1.74 million shares of WellPoint common stock to and among the Class members to account for the 2-for-1 stock split that occurred after April 2002.

5. Grant preliminary and permanent injunctive relief in favor of Plaintiffs and the Class members in the form of Orders requiring Defendants, and each of them, to conform their conduct to

the terms of the specific performance order prayed for above.

6. Award Plaintiffs and the Class members compensatory damages to be paid by Defendants and each of them, jointly and severally, with respect to each claim for relief in amounts ranging between \$54.7 million and \$155 million to be determined from the evidence in accordance with law.

7. Award Plaintiffs and the Class members punitive damages with respect to the Sixth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth and Seventeenth Claims for Relief against Defendants, and each of them, jointly and severally, as the case may be, in amounts ranging between \$150 million and \$500 million to be determined from the evidence in accordance with law.

8. Award Plaintiffs and the Class members their costs and expenses of this action, including reasonable attorneys' fees, together with pre-judgment and post-judgment interest at the maximum rate allowed by law.

9. Grant such other and further relief as the Court may deem just and proper.

/s/ Eric H. Zagrans

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JURY DEMAND

Plaintiffs hereby demand a trial by jury, pursuant to Rule 38 of the Federal Rules of Civil Procedure, on all issues so triable.

/s/ *Eric H. Zagrans*

Eric H. Zagrans