

3. Commissioner Sebelius took “judicial notice” of the Form A application made by Anthem with the Insurance Commissioner’s office. (I, 25:7-18).
4. Admitted into evidence was Exhibit 1, the Plaintiff conversion for the present matter and the “Alliance Agreement” in the present matter. (I, 29:23-31:1).
5. John W. Knack, Jr., President and Chief Executive Officer (CEO) of Blue Cross Blue Shield of Kansas, testified there are approximately 715,000 Kansans insured by Blue Cross Blue Shield OF Kansas (BCBSKS) with approximately 172,000 of those being policyholders. (I, 69:12-18).

II. BCBSKS CURRENT OPERATIONS AND HOW THE TRANSACTION WILL IMPACT SUCH OPERATION.

6. John W. Knack, Jr., President and Chief Executive Officer (CEO) of Blue Cross Blue Shield of Kansas, testified, in part, that the system in place at Blue Cross Blue Shield of Kansas is a very good system for paying claims. (I, 28:24-29:4 and 38:12-14).
7. Mr. Knack testified he was not concerned about an imminent insolvency of Blue Cross Blue Shield of Kansas. (I, 62:7-10).
8. Mr. Knack additionally testified that Blue Cross Blue Shield of Kansas has adequate capital and surplus to operate the business in which it operates. (I, 62:11-15).
9. Mr. Knack testified that there will be no direct infusion of capital to Blue Cross Blue Shield of Kansas by Anthem. (I, 65:8-10).
10. Mr. Knack confirmed that there is currently no agreement between Blue Cross and Anthem under which Anthem would put more money into Blue Cross Blue Shield of Kansas. (I, 65:21-66:6).

11. Mr. Knack testified that Blue Cross Blue Shield is susceptible to illnesses, local events, legislation and “other things” but that Blue Cross Blue Shield of Kansas would remain subject to those risks even if it becomes part of the Anthem empire. (I, 67:23-68:7).
12. Mr. Knack testified that Blue Cross Blue Shield is in a strong financial position and that policyholder surplus represents 629% of the company’s risk-based capital requirements as of December 31, 2000. (I, 75:22-76:2).
13. Blue Cross Blue Shield management, as testified to by Mr. Knack, led the company to pro forma operating profitability for the last 12 years. (I, 76:3-6).
14. Additionally, Mr. Knack testified that Blue Cross Blue Shield operates with an average administrative cost compared with other Blue Cross plans. (I, 76:7-11).
15. Michael M. Mattox, Executive Vice President, Blue Cross Blue Shield of Kansas, testified that Blue Cross Blue Shield of Kansas has an excellent staff and staff of qualified people in all departments. (I, 117-21 and 142:17-22).
16. Mr. Mattox testified that it was not his view that Blue Cross Blue Shield could not operate safely or for the benefit of policyholders because it lacks adequate staff to do so. (I, 142:23 – 143:2).
17. Donald R. Lynn, Vice President of Finance for Blue Cross Blue Shield of Kansas, testified that the investment of company assets decision-making process will change from Topeka and will be managed out of Indianapolis, Indiana. (I, 338:20-339:4).
18. Mr. Lynn testified that a decision on whether a rate ought to be increased on any product line is made by the management of the Kansas officers in charge but

could not confirm that such decisions, if the transaction is completed, would remain in Kansas. (I, 339:5-340:2).

19. Larry Glasscock, President and Chief Executive Officer, Anthem Insurance Companies, Inc., (Anthem) testified that Anthem paid a civil penalty of \$500,000 as imposed by the Kentucky Department of Insurance in year 2000. (II, 606:15-22).
20. Michael Smith, Executive Vice President and Chief Financial Officer, Anthem Insurance Companies, testified that relative to other companies that the administrative ratio appears fairly efficient for Blue Cross Blue Shield of Kansas. (II, 647:11-16).
21. Donald R. Lynn, in his “Written Statement of Donald R. Lynn”, Exhibit 13, states in part that Blue Cross Blue Shield of Kansas is currently “the largest health insurer in Kansas.” Additionally, Mr. Lynn states that more than 715,000 Kansas residents have private health coverage insured or administered by Blue Cross Blue Shield of Kansas. Further, Mr. Lynn’s prefiled “statement” indicates that in the year 2000 Blue Cross Blue Shield had premiums of \$873 million, surplus of more than \$328.5 million, net income of \$5.8 million and assets of \$730.8 million. (See pages 1 and 2 of Written Statement of Donald R. Lynn, Exhibit 13).
22. Mr. Lynn also testified that Blue Cross Blue Shield of Kansas “enjoys a strong in-state market share.” (Page 2, statement of Donald R. Lynn, Exhibit 13).

III. IMPACT OF THE TRANSACTION ON PROVIDER RELATIONS AND CONTRACTS.

23. Mr. Knack testified that Blue Cross Blue Shield has forged excellent relationships with providers, employers and patients in its 59-year history. (I, 75:16-21).

24. Mr. Knack testified that Blue Cross contracts with 98% of all medical doctors in its service area and 99% of all hospitals in its service area. (I, 76:20-77:2).
25. Mr. Knack testified that the Blue Cross network participation in its service area results from the company's record of service in pending reimbursement terms and timely payments. (I, 77:3-8) [see Blue Cross Blue Shield bates stamped document 60649 through 651].
26. Mr. Mattox, BCBSKS, testified that in provider agreements there is a "most favored nations clause" but Blue Cross Blue Shield has chosen not to enforce them. (I, 154:22-155:24).
27. Mr. Glasscock, Anthem, testified that he could not "specifically" testify as to what commitment Anthem is making to Kansas hospitals. (II, 596:4-11).
28. Mr. Glasscock testified as to an Anthem Power Point slide relating to "Commitment to Hospital and Physician Partners." (See bates stamp number BC600739) (II, 594:5-600:8).
29. The Anthem Power Point slide "Commitment to Hospital and Physician Partners" included separate bullet points as follows:
 - Strengthen Local Hospital and Physician Relationships
 - Build Upon Hospital and Physician Partnerships to Improve Quality and Clinical Performance
 - Provide Better Service and Information to Manage Health Care
 - Reduce Administrative Burden/Lower Provider Administration Costs/Transform Perceived Barriers to

Access Health Care Delivery to Facilitation of Health Care
Delivery

As a Result, Anthem Plans Are Often Preferred Health
Plans by Physicians and Hospitals

30. Mr. Glasscock testified that as to the most favored nations clause in the provider agreements he would not want to speculate on what Anthem would intend to do. (II, 598:13-599:21).
31. Additionally, Mr. Glasscock testified that he could not “speculate on whether we [Anthem] would agree to have every single hospital in the network.” (II, 600:2-17).
32. Mr. Glasscock testified that “all the contracting and utilization decisions are made at the local level” and that he is not involved in those issues. (II, 603:12-22).
33. Mr. Glasscock testified unequivocally that the “day-to-day medical decisions” will remain in Kansas. (II, 615:16-20).
34. Samuel R. Nussbaum, M.D., Executive Vice President and Chief Medical Officer, testified that Anthem creates medical policy based on the current state of medical science and evidence-based medicine and that medical policy development at Anthem is based on evidence-based decision making. (II, 696:1-16 and 703:8-25 and 704:17-20).
35. Dr. Nussbaum testified that medical decision that are derived from Anthem’s policy are made on a local basis in Anthem states. (II, 705:15-19).
36. Dr. Nussbaum testified that Anthem recognizes and respects the uniqueness of clinical care; that locally-based medical directors make coverage decisions in a complex clinical environment. (II, 705:15-706:2).

37. Dr. Nussbaum testified that Anthem “anticipates” that a Kansas physician will act as medical director for Anthem health plans of Kansas. (II, 706:3-13).
38. Dr. Nussbaum testified that utilization management decisions are made locally. (II, 718:4-10).
39. Dr. Nussbaum testified that utilization management is one place where money can be saved under Anthem’s practices. (II, 719:23-720:14).
40. Dr. Nussbaum did testify that “national accounts” historically are managed differently and that a “national team” adopts a common standard for use across Anthem. (II, 720:15-721:1).
41. Dr. Nussbaum testified that Anthem’s utilization management uses “licensed, nationally-accepted guidelines.” (II, 731:2-4).
42. Dr. Nussbaum testified he is not aware of anything in writing or anything specific for the west region of Anthem that would be applicable to Kansas providers relating to “network adequacy standards.” (II, 735:11-736:3).
43. Dr. Nussbaum testified he is not aware of anything in writing that is specific that would be utilized in the west region if Blue Cross Blue Shield were to become part of the west region relating to provider credentialing standards. (II, 736:4-11).
44. Carl J. Schramm, Ph.D., J.D., testified his analysis regarding the Blue Cross Blue Shield/Anthem transaction indicates there would be a “welfare loss to the community” in that the amount of premium dollars and total expenditures from the plan of plan-generated income revenue will, in fact, go down in the locality with implications and potential reductions to the budget of the providers of care, hospitals and doctors and as a secondary effect, directly, an increase in the number of persons potentially uncovered resulting again on an impact on the

- providers of increased bad debt load. (III, 1245:16-1246:23, 1256-62, and 1262:24-1263:13, see also Exhibits 71 and 72.)
45. Dr. Schramm's analysis provided that medical claim cost ratio was highest for non-profit Blue plans at 83.7%, dropped markedly for Blue plans that converted to investor-owned status at 73.5% and for commercial plans at 80.1%. (III, 1265:18-1266:17).
 46. Dr. Schramm's conclusion from his analysis that Blue Cross plans that convert from non-profit status to for-profit investor-owned status pay out "significantly less" than what they operated as not-for-profit plans. (III, 1266:17-1267:5).
 47. Dr. Schramm testified that he believed the health insurance market in Kansas is price sensitive. (III, 1294:11-15).
 48. Dr. Schramm testified that Kansas is a very limited contestable market in that any party that is desiring to enter the Kansas market would find it a "daunting prospect" to take on an insurance company such as Blue Cross Blue Shield of Kansas in and of itself in size and market predominance and that, coupled with a new purchaser of the dimensions of Anthem, would cause anybody yet further "pause." (III, 1296:12-1297:11).
 49. Marvin M. Fairbank, Director of Contracted Care, Stormont-Vail HealthCare, Topeka, Kansas, testified as it relates to experience as it relates to contracting of managed care for 23 clinics, 125 physicians, hospital surgery center, home health care, hospice and the remainder of Stormont-Vail HealthCare business activity. (III, 1319:11-1320:11).
 50. Mr. Fairbank testified, based on experience at Stormont-Vail HealthCare, that Anthem, as the acquiring company, has a propensity for denials which would

withhold care from many Kansans and money that had been earned in good faith by hospitals and other providers and that such would be withheld. (III, 1321:14-23).

51. Mr. Fairbank testified that 9 denials from Anthem occurred regarding 100 cases while only 6 denials came from Blue Cross Blue Shield involving 4,400 cases and that if such are projected out there would be a “substantial difference” in the amount of care withheld by or unauthorized by Anthem as compared to Blue Cross. (III, 1321:24-1322:12).

52. Anthem has represented that it will only “establish and maintain (or continue existing) hospital, medical and dental advisory committees for Blue Cross Blue Shield of Kansas for a period of not less than 3 years following the closing date.” (Exhibit 13, page 38).

IV. ALLEGED “COST SAVINGS” BASED ON THE TRANSACTION AND RELATED INFORMATION.

53. Mr. Knack testified that while there had been many requests by the Kansas Insurance Department (KID) Testimonial Team to quantify “cost savings and economics of scale” that Blue Cross Blue Shield has not provided any information to the KID Testimonial Team about the magnitude of those respective savings. (I, 68:13-69:11).

54. Mr. Knack testified that Exhibit A to the testimony of Michael Smith indicates “integration opportunities of \$7,749,000 with \$603,000 savings resulting from Blue Cross Blue Shield dues reduction and \$5.53 million relating to savings associated with a “pharmacy benefit manager.” However, Mr. Knack could not explain what that is. (I, 81:9-85:9).

55. Mr. Knack testified that there is no guarantee or commitment that savings as identified will be carried out if the transaction is approved and goes forward. (I, 91:2-12).
56. Mr. Knack testified that the process of quantifying the benefits from economics of scale would be a process that will take “a couple of years” to fully integrate. (I, 91:15-24).
57. Mr. Knack testified that his “suggestion” to the Commissioner that there is a savings benefit but he is not able to define or quantify it at the present time. (I, 91:25-92:4 and 92:22-24).
58. Mr. Mattox testified that Exhibit 50 includes \$7.7 million efficiencies that could be returned on an annual basis. (I, 178:19-179:2).
59. Mr. Mattox testified that he has no knowledge of information that has been provided to the Testimonial Team regarding the conclusory information about “hoped for or anticipated savings” and therefore could not support the savings through any type of calculations, back up, detail or other indication or evidence of cost savings or economics of sale that would be produced by the proposed transaction. (I, 185:9-22).
60. Donald R. Lynn, Vice President of Finance for Blue Cross Blue Shield of Kansas, testified that Exhibit 41, being the exhibit that shows the underwriting results by line of business for calendar years 2001 through 2005, was a “plan for improving” Blue Cross Blue Shield of Kansas “situation to reach break-even.” (I, 290:22-291:6, 320:19-321:11, 323:7-10).
61. Mr. Lynn testified that Exhibit 41 was the “best shot” at projecting five years in the future as to what the company could hope to achieve. (I, 323:19-324:13).

62. Mr. Lynn testified that Exhibit 41 shows that eventually by year 2005 Blue Cross Blue Shield would be experiencing a .4% underwriting gain. (I, 325:13-20).
63. Mr. Lynn testified that the Blue Cross Blue Shield plan for getting from a -3.2% to a +.4% in underwriting gain is a plan in which you apply rate increases selectively to different blocks of insurance policies rather than across the board. (I, 326:10-20).
64. Larry Glasscock, President and Chief Executive Officer, Anthem Insurance Companies, Inc., testified that he had reviewed the prefiled testimony of Mr. Kovey and did not disagree with anything contained within that prefiled testimony. (II, 546:21-547:23 and 569:19-23).
65. Mr. Glasscock testified that he disagreed with the KID Testimonial Team that the only way for Kansas plans' performance to improve after the acquisition is by increasing premium rates. (II, 570:24-571:5).
66. Michael Smith, Executive Vice President and Chief Financial Officer, Anthem Insurance Companies, testified that Exhibit 50, relating to potential savings of \$7.7 million are annual savings. (II, 633:3-17 and 642:3-17).
67. Mr. Smith was familiar with the exhibit wherein Blue Cross Blue Shield included a five-year projection that resulted in a .4% underwriting gain for the company. (II, 646:23-647:4).
68. Mr. Smith confirmed that through the hearing process he learned that requests for detailed information about how Anthem was going to achieve greater operating gains or operating margins without raising premiums had been requested. (II, 649:9-21 and 650:23-651:5).

69. Mr. Smith testified that as it relates to the document relating to a projected \$7.7 million in savings that he agrees that that is the only document provided by Anthem to anyone in this proceeding regarding anticipated savings. (II, 656:15-657:7).
70. Mr. Smith testified that the “schedule” relating to savings as to the financial impact of the transition is on a “presumptive basis” that the initiatives are executed. (II, 660:1-661:6).
71. Mr. Smith testified that Anthem’s current risk based on capital position is about 703% of the RBC ratio, that Blue Cross Blue Shield has an RBC ratio of substantially more than 600% and that after the transaction closes that it is Anthem’s practice to capitalize over a reasonable period of time all of their subsidiaries in the range of 200% to 250%. (II, 663:3-664:13).
72. Mr. Smith testified that such would be a reduction in current capital position. (II, 664:20-665:1).
73. Mr. Smith testified that the projected savings in Exhibit 61 of \$7,319,248,000 is total savings realized over the “span of time” relating to that exhibit and that the annual column only reflects a savings of \$2,453,000,003. (II, 672:9-673:13).
74. Mr. Smith testified that the projected savings of \$5.5 million through integration of a pharmacy benefit manager program that exists on Exhibit 50 represents an opportunity to capture savings through a pharmacy benefit but there is no plan to implement such if the transaction occurs. (II, 676:13-677:22).
75. Mr. Smith testified he was not aware of any of the details that had “been built” into this pharmacy benefit recommendation. (II, 677:23-678:7).

76. Mr. Smith finally testified that the “very best information” that would demonstrate savings as alleged by Anthem have not been provided to the Commissioner. (II, 692:10-25).
77. Donna O. Moore, Regional Vice President for Health Care Management for Anthem East (Connecticut, Maine and New Hampshire), testified relating to the east regional plan but indicated that she does not have any familiarity at all with the west region of Anthem (of which Kansas would be a part). (II, 790:16-19).
78. David R. Frick, Executive Vice President and Chief Legal and Administrative Officer, Anthem Insurance Companies, Inc., testified that he was familiar with the September 5, 2001 letter from the KID Testimonial Team that requested fairly detailed financial information but answered that he was not aware that Anthem had provided all the information that was requested. (II, 808:19-809:23).
79. Mr. Frick testified that as it relates to an analysis of cost savings that Exhibit 1.B.3. refers to an organizational chart but makes no other reference to other information regarding cost savings. (II, 816:4-22).
80. Mr. Frick confirmed that while an analysis of cost savings expected to be derived by Anthem relative to the Blue Cross Blue Shield of Kansas acquisition from December 31, 2001 to 2005 has been represented, that there are no financial projections beyond 2002. (II, 818:14-819:1).
81. Mr. Frick testified that it is evident that the issue relating to Anthem’s ability to document cost savings had been the subject of extensive communication between the parties. (II, 823:17-22).
82. Mr. Frick confirmed that should the transaction proceed that the fees paid by Anthem to Blue Cross Blue Shield of Kansas for use of the provider network or

for administering claims on its behalf would be eliminated and Blue Cross Blue Shield of Kansas would no longer get that as revenue. (II, 837:6-838:7).

83. Mr. Frick testified that he has no knowledge that information was provided to the KID Testimonial Team, as the Testimonial Team had requested, relating to membership growth, similar to no information had been provided relating to details of projections of cost savings. (II, 874:25-877:13).

84. In addressing issues of fairness under the applicable Kansas statutes, the Testimonial Team's prefiled brief included the following synopsis:

The Testimonial Team believes that, fundamentally, the analysis must weigh the reasons for the transaction, and the expended advantages, on the one hand, against potential and expected adverse consequences on the other. The reasons articulated by Blue Cross and Anthem for the proposed transaction are general and somewhat speculative in nature. They boil down to an argument that, in the absence of the acquisition, BCBSKS will be unable to grow sufficiently to survive. See Mr. Knack's testimony at pp. 5-6. The expected advantages are essentially the same: the ability of BCBSKS to grow and thus survive. There is no argument advanced that, as was the case in Colorado for example, BCBSKS is in dire financial straits making a transition of this nature essential to its survival. Indeed, it has been undisputed that the company has done well and succeeded in accumulating a substantial amount of surplus above that required by applicable law or for its prudent operations. Indeed, the proposed transaction contemplates distributing as much as \$131 million of that surplus to Eligible Policyholders and despite general statements to this effect, neither Blue Cross nor Anthem have provided adequate evidence that the combination will result in material efficiencies and cost savings. (See KID Testimonial Team prefiled brief pp. 34-35).

85. The Blue Cross Blue Shield of Kansas "Policyholder Information Statement", Exhibit 23, states in part, at page 12, that Blue Cross Blue Shield of Kansas, upon its conversion of a stock company owned by Anthem, is expected to take measures to return to operating profitability which may differ from those which it would have taken in the absence of the conversion. This statement goes on to

reflect that “these measures” may include “material premium increases, initiatives to improve operating efficiencies and cost containment measures.” Additionally, the statement goes on to represent that “Anthem may be expected to take measures” to return Blue Cross Blue Shield to operating profitability and such measures would include improving efficiencies, cost containment measures and/or premium increases in an attempt to achieve a reasonable operating margin. (Exhibit 13).

V. ALLEGED “DUE DILIGENCE” REVIEW BY BCBSKS OF THE TRANSACTION.

86. In conducting “an extensive reverse due diligence” by Blue Cross Blue Shield Mr. Mattox testified that Blue Cross Blue Shield of Kansas obtained information about Anthem from the National Blue Cross Blue Shield Association. (I, 162:9-165:21).
87. Mr. Mattox also testified that the only other place that Blue Cross Blue Shield of Kansas obtained information was from Anthem. (I, 165:22-25).
88. Mr. Mattox testified that an oral report was made to the officers of the corporation and subsequently the same information to the Board of Directors but there was no hand outs or documentation relating to this reverse due diligence investigation. (I, 166:13-167:7).
89. Mr. Mattox testified that he did not keep any of the records that he compiled in the reverse due diligence but destroyed them. (I, 167:8-15).
90. Mr. Mattox confirmed that Blue Cross Blue Shield engaged Dresdner Kleinwort Wasserstein (DKW) to issue an opinion regarding the fairness of payments to policyholders knowing that DKW was also the co-manager for Anthem’s initial public offering. (I, 168:14-170:8).

91. Paul Adams, Dresdner Kleinwort Wasserstein managing director, testified that DKW served as financial advisor to Blue Cross Blue Shield in connection with its plan of conversion and at the time of giving an updated opinion DKW was doing business for Anthem with regard to the IPO. (I, 354:3-15, 355:8-14 and 383:1-20).
92. William H. Pitsenberger, Vice President and General Counsel, Blue Cross Blue Shield of Kansas, Inc., testified that in investigating “lawsuits” that were filed against Anthem that the only investigation he undertook was asking Anthem for a litigation report. (I, 407:25-408:5 and 447:17-448:1).
93. Mr. Pitsenberger testified that his express written testimony states that he believes this transaction will not be unfair or hazardous to policyholders but in reaching that conclusion he has not looked at any of Anthem’s practices. (I, 448:23-449:15).

VI. ALLEGED “PROPORTIONAL EMPLOYMENT” ISSUE.

94. Mr. Mattox testified that Anthem uses a “proportional employment” matrix that guarantees proportional employment in each state based on enrollment in the various plans. (I, 172:8-173:6).
95. Mr. Mattox testified the proportional employment matrix is based on membership that the plan serves. (I, 173:16-25).

Mr. Smith testified that under the proportional employment model used by Anthem that by way of example if Anthem has 10 million members and 1 million of those members reside in a single state Anthem would seek to have 1/10 of its employment base in the same state. (II, 682:14-25).

96. The alliance agreement between Anthem and Blue Cross Blue Shield of Kansas, Section 6.40, page 62, under the heading “Post-Closing Employment Levels”

states that Anthem within 3 years after the closing date will achieve the goal of maintaining substantially proportionate levels with respect to its operations in Kansas as compared to other geographic areas in which the purchaser operates based on the level of membership in those areas subject to such fluctuations as are required in Anthem's reasonable business judgment to respond to business conditions in general, or to substantial changes in the relevant Kansas laws or regulations. (See Hearing Exhibit 2).

97. Neither Blue Cross Blue Shield of Kansas nor Anthem has provided any hard figures relating to the proportionate employment ratio either through testimony or through the alliance agreement. (I, II, III)

VII. BCBSKS EXPERT TESTIMONY AS TO ECONOMIC IMPACT OF TRANSACTION.

98. Paul J. Feldstein, Ph.D., Blue Cross Blue Shield of Kansas economics expert, testified he did not know who Blue Cross Blue Shield of Kansas' closest competitor in the small group market in Wichita, Kansas was. (I, 203:7-11 and 265:18-21).
99. Additionally, Dr. Feldstein testified he has not gathered any data about the competition in the small group market in Wichita, Kansas. (I, 266:3-9).
100. Further, Dr. Feldstein testified that he has not gathered any data about the western part of the state of Kansas. (I, 266:10-13).
101. Dr. Feldstein finally admitted that he has not gathered any data on Kansas. (I, 266:13-14).
102. Dr. Feldstein admitted that he has not looked at or examined any data that has to do with the proposed acquisition by Anthem of Blue Cross Blue Shield of Kansas. (I, 267:15-268:2).

103. Dr. Feldstein confirmed that he had not looked at any data on the conversion. (I, 268:3-5).
104. Dr. Feldstein testified that he did not know what the legal requirements are to sell insurance in the state of Kansas. (I, 271:11-17).
105. When posed with the hypothetical of raising average premiums for policies of \$10 relating to the small group market of Blue Cross Blue Shield in Kansas Dr. Feldstein testified he did not know exactly what the impact on the volume of insurance business would be. (I, 271:18-25).
106. Dr. Feldstein testified that he did not know what the average premium was that is charged by Blue Cross for a small group policy in Kansas. (I, 275:1-4).
107. Dr. Feldstein testified that he did not know what Blue Cross' competitors' rates are. (I, 275:5-7).
108. Dr. Feldstein testified that he had studied his own empirical research but none of the studies involve Kansas. (I, 275:15-276:13).
109. Dr. Feldstein testified that in giving his opinion he did not study Blue Cross Blue Shield but studied the literature relating to not-for-profit and for-profit companies. (I, 276:14-23).
110. Dr. Feldstein admitted that even though he has criticized the PriceWaterhouse Cooper/Hunt report because it did not include an in-depth analysis, he admits that he has not done an in-depth analysis. (I, 277:23-278:6).
111. Dr. Feldstein admitted that his examples comparing non-profit insurance companies with for-profit insurance companies would not apply directly to the Blue Cross Blue Shield plan in the state of Kansas. (I, 278:23-279:7).

112. Dr. Feldstein admitted he doesn't know one way or the other whether "Kansas Blue Cross plan" is efficient or not. (I, 281:14-21).
113. Dr. Feldstein testified that he has not done any research on rural health care. (I, 283:3-10).
114. Dr. Feldstein testified he has no specific knowledge as to the principal sources of revenue for a Kansas rural hospital would be. (I, 283:14-24).
115. Under questioning as to principal sources of revenue for a typical rural hospital, Dr. Feldstein testified that insurance would be one such source but then testified he is not familiar with Kansas. (I, 283:14-284:9).
116. Dr. Feldstein testified that he has not done any study as to the current marketplace and competitive disadvantage for not-for-profit Blue plans with for-profit competitors. (I, 284:10-21).

VIII. PREMIUM INCREASE GREATER WITH THE TRANSACTION THAN WITHOUT TESTIMONY AND EVIDENCE.

117. Kathy Greenlee, General Counsel, Kansas Insurance Department, testified that even though the Testimonial Team had been diligently involved in the process for several months she was not able to reach an unequivocal recommendation to the Commissioner with regard to the transaction but did testify that the transaction is likely to result in rate increases above those that would occur in the absence of the transaction. (II, 879:10-22 and 882:10-23).
118. Ms. Greenlee testified that because the additional rate/premium increases are likely to be of such magnitude, they could justify the Commissioner disapproving the sponsored demutualization. (II, 882:16-883:2).

119. Ms. Greenlee testified that she relied on the PriceWaterhouse Cooper report demonstrating that there are likely to be rate increases across Anthem of 2% to 3% which would include large groups, small groups and individual segments. (II, 906:25-907:8).
120. Ms. Greenlee testified that the Testimonial Team's concern about overall increases in the company's operations in the range of 2% to 3% across all the premiums calculated would not in fact be applied across all the market lines but across small groups and individual products; therefore amplifying the amount of rate increases that would fall on those particular markets. (II, 914:20-915:22).
121. Ms. Greenlee testified that it is fair to say that she concluded that apart from the conclusion that Anthem would raise rates materially faster than Blue Cross Blue Shield that there was nothing presented to her by her advisors or the Testimonial Team that would justify the Commissioner concluding that the acquisition is likely to be hazardous or prejudicial to the insurance-buying public. (II, 939:9-19).
122. Ms. Greenlee testified that she was curious about the inconsistency with projections relating to 2% to 3% operating margin by year 2007 and the projections provided by Blue Cross Blue Shield to "their bankers" demonstrating an underwriting margin of .4% by the year of either 2003 or 2005. (II, 945:22-947:7).
123. Ms. Greenlee testified that she has information based on what the company has been able to achieve and recognition by the company in their conversations with the KID Testimonial Team bankers and the company bankers that they don't believe they will achieve even the .4% underwriting margin. (II, 947:8-14).

124. Ms. Greenlee testified that in order for Anthem to achieve 3% operating margin gain in Kansas they would have to improve profitability one of two ways, being either increased revenues or decreased expenses. (II, 954:17-22).
125. Ms. Greenlee testified that Exhibit 50 identifies projected cost savings but there is no analysis or supporting information to support the alleged cost savings by the company. (II, 1004:11-21).
126. Ms. Greenlee testified that Anthem had not presented to her a “concrete plan” or “concrete proposal” demonstrating how specifically in Kansas it could possibly make its membership grow. (II, 1019:9-14).
127. Ms. Greenlee further testified that Anthem did not present to her in writing or any other method specifically how it could come into Kansas and target specific incidences where it could reduce cost. (II, 1019:15-20).
128. Ms. Greenlee testified that she had not seen anything written that specifically outlines “point-by-point how specifically Kansans will benefit from Anthem coming in and acquiring Blue Cross Blue Shield of Kansas.” (II, 1020:3-17).
129. Ms. Greenlee testified that attorney for Anthem, Randall Forbes, provided her with a document believed to have been the S-1 form from the public offering but that document did not contain any projections about Kansas premiums, Kansas expenses or Kansas benefits and in fact the information does not have any Kansas information on it. (II, 1026:10-1027:14).
130. David M. Platter, Senior Managing Director, Bear Stearns, testified on behalf of the KID Testimonial Team that Bear Stearns asked for “verbal guidance” regarding future underwriting performances and that Blue Cross Blue Shield of Kansas management mentioned a 1 ½% to 2 ½ % underwriting margin which

- Anthem agreed were achievable over a reasonable period of time [see Bear Stearns fairness opinion letter]. (III, 1062:24-1063:8).
131. Mr. Platter confirmed that such percentage figures were not used because they were subsequently told to rely on numbers which culminated in a 0.4% positive underwriting margin in the year 2005 which was different from the discussions previously. (III, 1063:19-1064:5).
 132. Mr. Platter confirmed that throughout the process undertaken by Bear Stearns, requests for financial and other information was made from Blue Cross Blue Shield but they did not receive any detailed membership information for future years. (III, 1064:6-1065:10).
 133. Kenneth M. Beck, principal at PriceWaterhouse Coopers, testified on behalf of the KID Testimonial Team that he received information provided by Blue Cross Blue Shield regarding its projections as to future underwriting gains with such figures being a .04% underwriting gain in 2005. (III, 1078:7-20 and 1083:2-13).
 134. Mr. Beck testified that such figure was described as Blue Cross Blue Shield's management as best estimates for future experience through 2005. (III, 1083:14-19).
 135. Sandra S. Hunt, principal, PriceWaterhouse Coopers, testified on behalf of the KID Testimonial Team. (III, 1128:1-10).
 136. Ms. Hunt testified that the assignment for PriceWaterhouse Coopers was to oversee the marketing impact analysis and to gain an understanding of likely changes that would occur in the health insurance market in Kansas. The specific issues that were analyzed were "choices, availability and cost of insurance coverage, provider contracting arrangements, administrative processes,

- employment levels in Kansas and factors likely affecting Anthem's general performance." (III, 1132:9-22).
137. Ms. Hunt testified that the basic approach was to gather information from as many sources as PriceWaterhouse Coopers could within the available time. (III, 1132:22-24).
138. Ms. Hunt testified that PriceWaterhouse Coopers requested information from Anthem and Blue Cross Blue Shield, obtained information from the Departments of Insurance in other states in which Anthem operates, interviewed individuals who represent medical associations and hospital associations in states in which Anthem operates and reviewed public documents available through web sites and other sources. (III, 1132:24-1133:9).
139. The general conclusions reached by PriceWaterhouse Coopers were that with relation to "choice, availability and cost of insurance," that PWC believes that the levels of insurance that are available today would likely continue but there would be rate increases of a level somewhat higher than would occur in the absence of the transaction. (III, 1133:13-23).
140. Ms. Hunt testified that Anthem would be the largest insurance carrier in Kansas as Blue Cross Blue Shield is today and that as such Anthem would have an ability to influence the market. (III, 1134:15-20).
141. Ms. Hunt summarized the conclusion that in the area of rate increases a number of factors were reviewed to include Blue Cross Blue Shield of Kansas history in achieving underwriting margins in which they found that for the past six years Blue Cross Blue Shield of Kansas had experienced underwriting losses averaging 2%. (III, 1135:6-22).

142. Ms. Hunt testified that additional consideration was the expectation that Blue Cross Blue Shield expressed in valuing the company with a .4% underwriting margin as the best expectation of a level of underwriting gains that could be achieved. (III, 1135:22-1136:3).
143. Ms. Hunt also testified that PWC also considered the expectations of a stock insurance company with underwriting gains of at least 3% and considered the differences in premium and other activities that would be required to reach those underwriting gains. (III, 1136:3-9).
144. Ms. Hunt further testified that PWC considered the level of efficiency of the current Blue Cross Blue Shield plan and its administrative costs and considered whether additional efficiencies would be the most likely way the underwriting gains would be achieved. (III, 1136:9-15).
145. Ms. Hunt further testified that PWC considered the decreasing enrollment in the Blue Cross Blue Shield plan as an important factor in understanding where the additional difference between revenue and cost would occur. (III, 1136:15-19).
146. Ms. Hunt testified that based on the above analysis PWC concluded that on an average, a difference of 2% to 3% in premium would be required to achieve the underwriting margins across the board. (III, 1136:25-1137:5).
147. Ms. Hunt testified that she was not provided any information by Blue Cross Blue Shield or Anthem that enabled her to ascertain what strategies either Blue Cross or Anthem would use to achieve an improvement in underwriting gains in the future. (III, 1137:6-11).
148. Ms. Hunt testified that it was PWC's belief that rate increases or the additional margin would derive primarily from individual health care products for those

- individuals who are under 65, non-Medicare, and in the small group product line. (III, 1137:12-1138:21).
149. Ms. Hunt, through testimony, confirmed that the information provided by the company relating to projections of its “own goal” of 2% to 3% operating margin by 2007 was inconsistent with what the Testimonial Team was provided and asked to assume that being a .4% underwriting margin by 2005. (III, 1140:24-1141:9).
150. Ms. Hunt testified that PWC attempted to “seek” from Anthem or Blue Cross information as how Anthem or Blue Cross might reduce expenses to achieve an improvement in underwriting performance and the only information received was the document that was attached to Mr. Smith’s testimony. (III, 1141:15-1142:1).
151. Other than the exhibit attached to Mr. Smith’s testimony and Exhibit 41, PWC requested information from Anthem and Blue Cross regarding synergies, economics of scale, and cost savings but did not receive any additional information. (III, 1141:20-1143:16).
152. Ms. Hunt testified that in analyzing “achieved savings in other states” by Anthem that the Commissioner, based on that fact and that fact alone, should not assume rate increases will occur in Kansas because there is not sufficient information as it relates to this transaction that helps to understand where those savings can be achieved in a plan that is already operating quite efficiently. (III, 1143:17-1144:21).
153. Ms. Hunt testified that it is an established economic theory that if premiums go up competitors become interested in entering the market and that such is reflected in the PWC report. (III, 1154:24-1155:14).

154. Ms. Hunt testified that part of their conclusions in their report was the power to influence price based on the amount of market share held by Blue Cross Blue Shield of Kansas. (III, 1162:25-1163:6).
155. Ms. Hunt testified that in looking at the administrative cost ratios in other Anthem states PWC found them higher than the current administrative cost ratios in Kansas. (III, 1164:3-11).
156. Ms. Hunt testified that Blue Cross Blue Shield of Kansas has a 67% market share relating to premium revenue in Kansas excluding the Kansas City area. (III, 1167:3-24).
157. Ms. Hunt testified that based on the assumptions made as part of the PriceWaterhouse Coopers' analysis, their projection related to "likely premium increases over and above" what would be applicable with medical trends or other issues relative to competition. (III, 1184:11-18).
158. Ms. Hunt testified that PWC analysis indicates that rates above medical trend for large group and Medicare supplement are unlikely. (III, 1236:14-1137:4).
159. The "ultimate conclusion" provided by Ms. Hunt on behalf of PriceWaterhouse Coopers is that Anthem would raise rates for individual and small groups 6% to 7% faster than Blue Cross Blue Shield and that such is based on comparing a 0% underwriting margin for Blue Cross Blue Shield with a 2.5% underwriting margin for Anthem. (III, 1242:22-1243:6).
160. The Kansas Insurance Department (KID) Testimonial Team's prefiled brief, in Section D, concludes that the additional rate increases are likely to be of sufficient magnitude to justify a finding that they outweigh any benefits expected from the plan and that in the absence of adequate evidence to the contrary presented at the

evidentiary hearing, the Commissioner would therefore be justified in concluding that, on that basis, the plan would not be fair and equitable to policyholders and instead may be hazardous and prejudicial to the insurance-buying public. (KID Testimonial Team prefiled brief page 12).

CONCLUSIONS OF LAW

1. The Kansas statutes relevant to this proceeding, commonly referred to as acquisition statutes and conversion statutes, do not identify what weight or distribution of weighted percentages should be assigned to the different factors contained within the relevant statutes.
2. There being no statutory weighing or percentage associated with the factors, the Commissioner finds it appropriate to independently weigh each factor on an independent basis and then make an informed decision based on the presentation of evidence relevant to those factors.
3. An important benchmarking statute, and one that was addressed at great length during the hearing, relates to whether the transaction wherein Anthem would acquire Blue Cross Blue Shield of Kansas would be hazardous or prejudicial to the insurance-buying public.
4. Numerous components go in to the term “hazardous or prejudicial to the insurance-buying public” to include not only direct consequences of the transaction, e.g., the ability of a Kansan to secure health insurance coverage, but also the indirect issue of the ability of health care providers, hospitals and physicians, to continue to enjoy high quality service, reimbursement, and interaction such as been the case with Blue Cross Blue Shield of Kansas, which has been the cornerstone of such health care delivery system. Therefore,

contained within the term “hazardous or prejudicial to the insurance-buying public” are indirect issues that do not form the basis of a contract between the insurer and the insured but are contracts between the insurer and health care providers. While being an indirect consequence of the transaction, this provides a very direct impact on the health care that would be available for the Kansas insurance-buying public.

5. The interpretation of a statute by an administrative agency charged with the responsibility of enforcing that statute is entitled to judicial deference. When the agency is one of special competence and experience, such as the Kansas Insurance Department and the Commissioner sitting as hearing officer for the Department, the interpretation of the statute may be entitled to controlling significance. It is fundamental that where a statute is designed to protect the public interest the language of that statute must be construed in the light of the legislative intent and purpose and is entitled to a broad interpretation so that its public purpose may be fully carried out. K.S.A. 40-3301, summarized, states, in part, that in the public interest and in the interest of policyholders control of an insurer by the Kansas Insurance Department is appropriate and places this regulation of insurers with the Commissioner. In carrying out this statutory mandate, the Commissioner has broad discretion and obligation to see that the public interest is served.
6. Testimony offered by Blue Cross Blue Shield indicates that for a period of three years medical advisory committees will remain in place. Anthem has not committed to a continuation beyond this three-year period of the current process

- recognized by both Blue Cross Blue Shield of Kansas and Kansas health care providers as an important component for the delivery of health care.
7. Evidence is lacking of a continuation or representation, that can be verified, that such medical advisory committees will continue into the future beyond this 3-year period. It is specifically noted that Power Point slide number 4 of Exhibit 6 states in part: “We believe Anthem BCBS is the best alliance partner for our policyholders” and then continues, in part, to state: “Meaningful commitment to BCBSKS policyholders, local providers and Kansas” and “continued input through advisory committees” with “maintenance of local medical, dental and hospital advisory groups.” Such is directly contrary to a limited 3-year period. This conflicting evidence as advanced by Anthem and/or Blue Cross Blue Shield raises a serious question as to their commitment to “continued input through advisory committees” as is reflected in Exhibit 6. Therefore, there is sufficient support by clear and convincing evidence to find that evidence is lacking of a continuation of such advisory committees.
 8. The lack of local medical advisory committees to determine medical policy and/or utilization decisions would be detrimental to the Kansas insurance-buying public.
 9. It is recognized that testimony differs, but yet does not rise to a level of a direct representation, that Anthem, after the transaction, will maintain a Kansas-based medical director what is licensed in Kansas. The Commissioner recognizes that health care practitioners from outside the state of Kansas can obtain a Kansas medical license through the Kansas Board of Healing Arts, subject to its independent review and criteria. Evidence has not been presented, however, that such medical director would be a Kansas-based or Kansas-experienced physician

which would continue the delivery of the Blue Cross Blue Shield of Kansas approach to integrating high quality relationships with Kansas providers.

10. Anthem has not come forward to counter the analysis provided by PriceWaterhouse Coopers relating to increase of premiums to be paid by Kansans. Such analysis represents that an increase of insurance premiums would be greater with this transaction than without the transaction. It is recognized that both Anthem and Blue Cross Blue Shield of Kansas have countered such analysis in conceptual and general terms but have not presented any evidence, based on any recognized standard, that clearly disputes the PriceWaterhouse Coopers analysis.
11. Neither Anthem nor Blue Cross Blue Shield of Kansas has presented evidence that rises to the level of any recognized standard, e.g., preponderance or clear and convincing, that indicates the projected savings as claimed by Anthem, summarized as approximately \$7.7 million, will be actually realized.
12. Due to a lack of competent evidence in this area the Commissioner hereby rejects the conceptual and general categories due to a lack of quantifying data, lack of support in the evidentiary record, and a general overall failure to address the repeated request from the Kansas Insurance Department Testimonial Team to substantiate such representations.
13. Because the lack of support for such representation of savings cannot be quantified there is, without more, a finding that such premium increases under the transaction would have a direct impact on the insurance-buying public in Kansas. Therefore, without such quantified savings the transaction would be hazardous and prejudicial to the Kansas insurance-buying public.

14. Anthem has advanced that it would maintain in Kansas a proportional employment ratio. This means, based on the illustrations provided by Anthem, that whatever percentage of business Anthem has in Kansas as compared to its other states would be the same percentage of employment “head count” that Anthem would maintain in Kansas. Neither Anthem nor Blue Cross Blue Shield of Kansas have come forward with any quantifying numbers to support what this “proportional employment ratio” would be.
15. As with the projected savings, the “proportional employment ratio” remains elusive. The Commissioner specifically notes that Exhibit 49 represents Anthem head count with the last two columns being as of December 31, 2000 and June 31, 2001 for the states of Connecticut, Colorado, New Hampshire, Maine, Nevada, Ohio and Kentucky. Information and data has been provided to the Commissioner to represent that Blue Cross Blue Shield of Kansas has approximately 171,000 contracts with approximately 715,000 policyholders or “covered lives.” The Greater Topeka Chamber of Commerce web site provides employment “head count” for Kansas Blue Blue Shield of Kansas. Therefore, had either Anthem or Blue Cross Blue Shield of Kansas desired to provide supporting and quantifying numbers and data associated with this proposed “proportional employment ratio” they could have done so by (1) using the figures reflected in Exhibit 49, (2) testimony relating to the covered lives in Kansas, and (3) either internal Blue Cross Blue Shield of Kansas employment or readily available and verifiable employment figures such as the Greater Topeka Chamber of Commerce web site.

16. Due to a lack of any such quantitative data in the record, the Commissioner cannot find that Anthem would be committed to maintaining an employment ratio that would be the same as or greater than the employment ratio that Blue Cross Blue Shield of Kansas currently maintains for delivery of service to Kansans.
17. While the proportional employment ratio may be an appropriate business model there is nothing in the evidentiary record to indicate that service will remain the same or better and nothing in the record to suggest that the generalized concept of a “proportional employment ratio” will meet or exceed the current employment staffing levels by Blue Cross Blue Shield in Kansas. Therefore with the lack of evidence to support the maintaining of employment levels in Kansas (which is a direct indicator of recognized service in Kansas,) implies that such unverified proportional employment ratio could be hazardous or prejudicial to the insurance-buying public in Kansas based on a possible degradation of service.
18. This is not to say that any service provided by Anthem, if the transaction is approved, would be less than that currently provided by Blue Cross Blue Shield of Kansas. This conclusion of law is premised on the lack of any numbers/evidence in the record to support Anthem’s proportional employment ratio or that such would maintain or increase service to the insurance-buying public and therefore such general concept as advanced by Anthem does not accrue a finding in favor of Anthem.
19. Testimony was presented through Marvin Fairbank, Director of Contract Services, Stormont-Vail HealthCare, Topeka, Kansas, as to direct experience with both Anthem and Blue Cross Blue Shield of Kansas. (Exhibit 73). The unchallenged testimony is that Anthem had claim denials that went to appeal in 9

out of 100 cases. Blue Cross Blue Shield of Kansas, on the other hand, for the same time period at the same facility, only had 6 out of 4,371 claim denials go to appeal. Using these undisputed figures the Anthem claim denial of 9 out of 100 (or 9%) when multiplied out in a comparison to a projected 4,371 claims, would mean that there would be over 393 claim denials had Anthem been the insurer instead of Blue Cross Blue Shield of Kansas.

20. Such high level of projected claim denials is over 65 times higher than the Blue Cross Blue Shield “claim denial with appeal” rate. Without question such would be hazardous or prejudicial to the insurance-buying public in that once a Kansan secures insurance the denial of services, the denial of payment, and inability to process claims on the same level as Blue Cross Blue Shield of Kansas would directly impact the Kansas insurance-buying public through a degradation or diminution of service.
21. Notwithstanding Anthem’s testimony regarding its representation to Blue Cross Blue Shield to include a Power Point slide marked as BC600739 relating to “Commitment to Hospital and Physician Partners, Anthem has failed to come forward and provide any supporting evidence as to how it would (1) strengthen local hospital and physician relationships, (2) build upon hospital and physician relationships to improve quality and clinical performance, (3) provide better service and information to managed health care, and (4) reduce administrative burden/lower provider administration costs/transform perceived barriers to access health care delivery to a facilitation of health care delivery. Failure to support these four important representations directly impacts the insurance-buying public in Kansas and without support for these four components of the transaction

- planned, the transaction is deemed to be hazardous and prejudicial to the insurance-buying public.
22. Anthem has not refuted the financial imperative that to move from a negative underwriting return to a plus three percent, in a company that is already more efficiently run than Anthem, will require significant premium increases.
 23. Anthem failed to make reliable, enforceable commitments about its methods of operation post-transaction such that the quality of service to be experienced by policyholders and providers would be maintained or knowable.
 24. Further, BCBSKS did not produce any documentation to establish that it performed a “due diligence” review of Anthem despite the fact that it knew such proof would be crucial in the Commissioner’s examination of the proposed transaction.
 25. There is no credible evidence that the supposed benefits of the transaction touted by BCBSKS and Anthem are likely to occur. For example, none of the witnesses for BCBSKS and Anthem were able to quantify the supposed benefit of “economies of scale” and there is no commitment that Anthem will infuse any capital into BCBSKS.

CONCLUSION AND SUMMARY

The intervenors, Kansas Hospital Association and Kansas Medical Society, respectfully request the Commissioner adopt all of the foregoing findings of fact and conclusions of law and incorporate them into any order issued by the Commissioner in denying the pending application for approval of the proposed conversion/acquisition of Blue Cross Blue Shield of Kansas, Inc. and Anthem.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing pleading was served by e-mail and by U.S. Mail this _____ day of January, 2001, to:

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