

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

THE CIGNA GROUP,)
)
Plaintiff,)
)
v.) C.A. No. N23C-03-009 SKR CCLD
)
XL SPECIALTY INSURANCE)
COMPANY, et al.,)
)
Defendants.)

Submitted: September 5, 2025

Decided: December 8, 2025

Upon Consideration of Plaintiff's Motion for Summary Judgment on the First and Second Causes of Action of the Amended Complaint and Counts I and II of Defendant XL Specialty Insurance Company's Counterclaim

GRANTED-in-part and DENIED-in-Part

Upon Consideration of Certain Excess Insurer Defendants' Phase I Motion for Partial Summary Judgment

DENIED

Upon Consideration of Defendants Ironshore Specialty Company and Ironshore Indemnity Inc.'s Motion for Partial Summary Judgment

DENIED

MEMORANDUM OPINION AND ORDER

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RENNIE, J.

I. INTRODUCTION

This is an insurance coverage dispute in which Plaintiff The Cigna Group (“Cigna”) seeks coverage for three separate alleged claims from various insurer Defendants under its 2016–17 and 2017–18 managed care errors and omissions (“MCE&O”) insurance towers.¹ Recognizing the breadth of issues raised in this action, the Court bifurcated the case into Phase 1 and Phase 2.² Phase 1 is focused solely on whether Cigna is entitled to reimbursement of costs incurred in responding to certain DOJ civil investigative demands (“CID”), under its primary 2016–2017 MCE&O policy (the “Policy”).³ The defendants involved in Phase 1 are XL Specialty Insurance Company (“XL”), Ironshore Specialty Insurance Company (“Ironshore Co”), and Ironshore Indemnity Inc. (“Ironshore Inc.”, together with Ironshore Co, “Ironshore”, collectively with XL and Ironshore Co, “Insurers”), all of whom issued Cigna follow-form excess coverage above the Policy.⁴

Before the Court are Cigna’s Motion for Summary Judgment on the First and Second Causes of Action of the Amended Complaint and Counts I and II of

¹ See *generally* Amended Complaint (hereafter “Compl.”) (D.I. 117).

² See Judicial Proceeding Worksheet for July 12, 2024, Status Conference (D.I. 125).

³ See *id.*; Amended Case Management Order at 3 (D.I. 127). See also Plaintiff’s Opening Brief in Support of Its Motion for Summary Judgment on the First and Second Causes of Action of the Amended Complaint and Counts I and II of Defendant XL Insurance Company’s Counterclaims (hereafter “Cigna MSJ”), Ex. 3 (hereafter “Policy”) (D.I. 333). Nonparty Chubb, through nonparty ACE American Insurance Company (“ACE”), issued the Policy. See *generally* Policy.

⁴ See Cigna MSJ, Exs. 28 (“XL Excess Policy”); 29 (“Ironshore Excess Policy”).

Defendant XL Specialty Insurance Company’s Counterclaims (“Cigna MSJ”),⁵ Ironshore’s Motion for Partial Summary Judgment (“Ironshore MSJ”),⁶ and Certain Excess Insurer Defendants’ Phase I Motion for Partial Summary Judgment (“Excess Insurers MSJ” and collectively with the Cigna MSJ and Ironshore MSJ, the “Motions”).⁷ The Motions all address a single issue—whether the relevant CID, No. 16-419 (the “2016 CID”), is a “Claim” under the Policy.⁸ Cigna contends that the 2016 CID is a Claim.⁹ Insurers dispute that interpretation, arguing instead that the 2016 CID is a “Governmental Investigation.”¹⁰ For the reasons discussed below, the

⁵ See generally Cigna MSJ.

⁶ See generally Opening Brief of Defendants Ironshore Specialty Insurance Company and Ironshore Indemnity Inc. in Support of Motion for Partial Summary Judgment (hereafter “Ironshore MSJ”) (D.I. 402).

⁷ Brief in Support of Certain Excess Insurer Defendants’ Phase I Motion for Partial Summary Judgment (hereafter “Excess Insurers MSJ”) (D.I. 403). Specifically, Defendants XL, Homeland Insurance Company of New York (“Homeland”), Travelers Casualty and Surety Company of America (“Travelers”), and Admiral Insurance Company (“Admiral”), bring the Excess Insurers MSJ. See *id.* at 1. Defendant Lexington Insurance Company initially joined the Excess Insurers MSJ but settled with Cigna while briefing on the Motions was ongoing. See *id.*; Order of Dismissal with Prejudice of Defendant Lexington Insurance Company (D.I. 442).

⁸ See Cigna MSJ at 21–33 (arguing the 2016 CID is a Claim); Excess Insurers MSJ at 17–38 (arguing the 2016 CID is not a Claim); Ironshore MSJ at 13–25 (same). Accordingly, the Motions implicate Counts I and II of Cigna’s Amended Complaint and XL’s first and second Counterclaims. Count I of the Amended Complaint seeks a declaration “that CID No. 16-419 constituted a Claim under the [Policy], to which the 2016–17 XL Excess Policy and 2016–17 Ironshore Excess Policy follow form” such that XL and Ironshore have a duty to reimburse Cigna’s Defense Costs up to their respective policy limits. Compl. ¶¶ 90–93. Count II of the Amended Complaint alleges Insurers breached their Excess Policies by not indemnifying Cigna’s Defense Costs. *Id.* ¶¶ 94–98. XL’s first Counterclaim requests a declaration that “CID 16–419 is not a Claim under the 2016 Primary Policy.” XL Specialty Insurance Company’s Answer to the Amended Complaint and Counterclaims Against the Cigna Group (“XL’s Answer”) ¶¶ 69–78 (D.I. 146). XL’s second Counterclaim seeks a declaration that the “Wrongful Acts” at issue in first arose in policy year 2016–2017. *Id.* ¶¶ 79–88.

⁹ See Cigna MSJ at 21–33.

¹⁰ See Defendants Ironshore Specialty Insurance Company and Ironshore Indemnity Inc.’s Answering Brief in Opposition to Plaintiff’s Motion for Partial Summary Judgment (hereafter

Court agrees with Cigna—the 2016 CID a Claim, not a Governmental Investigation. Hence, the Cigna MSJ is **GRANTED-in-part** and **DENIED-in-part**, the Ironshore MSJ is **DENIED**, and the Excess Insurers MSJ is **DENIED**.

II. BACKGROUND

A. Cigna's Policy

At the center of the parties' coverage dispute is Cigna's 2016–17 MCE&O insurance tower.¹¹ Nonparty ACE wrote the primary policy.¹² XL and Ironshore each issued excess policies that provide coverage “in conformance with” the Policy.¹³

The Policy requires Insurers to pay “Defense Expenses as a result of any Claim that is first made against the Insured during the Policy Period[.]”¹⁴ Critically for purposes of the Motions, the Policy defines “Claim” as:

any written notice received by [Cigna] that a person or entity intends to hold [Cigna] responsible for a Wrongful Act[.] . . . In clarification and not

“Ironshore Cigna MSJ Opp’n”) at 15–35 (D.I. 361); Excess Insurer Defendants’ Opposition to Plaintiff’s Motion for Summary Judgment on The First and Second Causes of Action of The Amended Complaint and Counts I And II of Defendant XL Specialty Insurance Company’s Counterclaims (hereafter “XL Cigna MSJ Opp’n”) (D.I. 364). Although XL and Ironshore filed separate briefs opposing the Cigna MSJ, they make substantively identical arguments. Accordingly, the Court cites to Ironshore’s brief as representative of Insurers’ opposition to the Cigna MSJ.

¹¹ See *generally* Compl.

¹² See Policy.

¹³ XL Excess Policy § I; Ironshore Excess Policy §§ I, II.

¹⁴ Policy § I. “Defense Expenses” means “ordinary and customary costs, charges, fees and expenses incurred by the Insurer or [Cigna] . . . in the investigation, adjustment, defense or appeal of a Claim, provided that Defense Expenses shall not include remuneration, salaries, overhead, fees or benefit expenses of [Cigna].” *Id.* § II.G.

in limitation of the foregoing, such notice may be in the form of an arbitration, mediation, judicial injunctive or regulatory proceeding.¹⁵

“Wrongful Act” is defined as “any actually or alleged act, error or omission in the performance or failure to perform Managed Care Professional Services . . . [or] Medical Information Protection by [Cigna].”¹⁶

The Policy separately defines “Governmental Investigation” as:

(a) A civil investigative demand (‘CID’) from any state or federal governmental or regulatory agency, body or authority for documents, records, electronic materials or other data; or (b) a subpoena to [Cigna] from any state or federal governmental or regulatory agency, body or authority to give testimony or produce . . . documents, records, electronic materials or other data.¹⁷

The Policy does not provide indemnification for Cigna’s “Governmental Investigation Expenses”—“reasonable and necessary costs . . . incurred by [Cigna] to respond to or comply with a Governmental Investigation.”¹⁸ Instead, if “the Wrongful Acts alleged in or which are the subject of [a] Governmental Investigation subsequently give rise to a covered Claim against [Cigna] . . . up to [REDACTED] in Governmental Investigation Expenses” are applied to Cigna’s per-Claim self-insured retention.¹⁹

¹⁵ *Id.* § II.C.

¹⁶ *Id.* § II.DD.

¹⁷ *Id.* § II.L (“[t]he Governmental Investigation must relate to [Cigna’s] provision or failure to provide Managed Care Professional Services.”).

¹⁸ *Id.* § II.M.

¹⁹ *Id.* § V.A.3.

B. One-Way Chart Reviews and the 2016 CID

As a Medicare Advantage Organization (“MAO”), Cigna must comply with the False Claims Act (“FCA”) when it bills the government.²⁰ The DOJ can enforce the FCA against MAOs.²¹ The DOJ may issue CIDs to “any person” believed to “be in possession, custody, or control of any documentary material or information” relevant to an alleged FCA violation.²² Such CIDs must articulate: (1) “the nature of the conduct constituting the alleged violation;” (2) “the applicable provision of law alleged to be violated;” and (3) the specific evidentiary demand.²³ If a CID recipient fails to comply, the DOJ can seek a court order to compel performance.²⁴

In April 2016, the DOJ publicly declared that it considers “one-way chart reviews”²⁵ conducted by MAOs, to violate the FCA.²⁶ The Ninth Circuit then held that

²⁰ See *Universal Health Services, Inc. v. U.S.*, 579 U.S. 176, 181–82 (2016) (noting 31 U.S.C. § 3729 imposes “civil liability on ‘any person who . . . knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval.’” (quoting 31 U.S.C. § 3729)(a)). MAOs help the Centers for Medicare & Medicaid Services administer Medicare. See Cigna MSJ, Ex. 9. MAOs operate as a middleman, processing payment claims from healthcare providers and billing the federal government on a monthly basis. See 42 C.F.R. §§ 422.202-224.

²¹ See, e.g., *Graves v. Plaza Medical Centers, Corp.*, 281 F.Supp.3d 1260 (S.D. Fla. 2017); 31 U.S.C. § 3730(a)–(b).

²² 31 U.S.C. § 3733(a).

²³ *Id.* § 3733(f)–(h).

²⁴ *Id.* § 3733(j)(1).

²⁵ “One-way chart reviews” refers to a process in which, before submitting a request to the government, a MAO reviews a patient’s medical chart solely to find information that would increase the reimbursement received, without accounting for available information that would decrease payment. See *United States v. United Healthcare Insurance Company*, 848 F.3d 1161, 1170–71 (9th Cir. 2016).

²⁶ See Cigna MSJ, Ex. 12 at 3–4, 15, 22–23 (DOJ *amicus* brief arguing “[t]o the extent defendants designed chart reviews solely to find and report information that would lead to increased governmental payments . . . and ignored available information that would lead to decreased payments” that violates the FCA).

the DOJ’s one-way chart reviews theory “states a cognizable legal theory under the [FCA].”²⁷ Following that ruling, the DOJ began enforcement efforts against various MAOs based on one-way chart reviews.²⁸

As part of that enforcement activity, the DOJ issued Cigna the 2016 CID [REDACTED]
[REDACTED]²⁹ The 2016 CID directed Cigna to submit documents and answer interrogatories regarding its [REDACTED]
[REDACTED]³⁰ Cigna notified Insurers of the 2016 CID in July 2017.³¹ The DOJ issued Cigna subsequent CIDs covering the same conduct in 2018, 2020, and 2022.³²

In June 2017, Cigna signed a tolling agreement with to DOJ (the “Tolling Agreement”).³³ [REDACTED]
[REDACTED]
[REDACTED]³⁴ Cigna extended the Tolling Agreement several times.³⁵

²⁷ *United States v. United Healthcare Insurance Company*, 832 F.3d 1084, 1096 (9th Cir. 2016), *amended on denial of rehearing* 848 F.3d at 1174.

²⁸ See Cigna MSJ, Exs. 13–17.

²⁹ Cigna MSJ, Ex. 1 (hereafter “2016 CID”).

³⁰ *Id.*

³¹ See Cigna MSJ, Ex. 30 (“[W]e hereby provide notice of *a Claim*.” (emphasis added)).

³² See Cigna MSJ, Ex. 19.

³³ See Cigna MSJ, Ex. 2 (hereafter “Tolling Agreement”).

³⁴ *Id.*

³⁵ See Cigna MSJ, Ex. 18.

C. Cigna’s Coverage Requests and This Litigation

After Cigna provided its insurers with notice of the 2016 CID, it sought coverage for costs associated with responding to the DOJ’s request.³⁶ Cigna’s primary insurer, ACE, initially denied coverage—stating the 2016 CID was a “Governmental Investigation” not a “Claim.”³⁷ After some back-and-forth,³⁸ relying in part on this Court’s *Conduent* decision,³⁹ ACE reversed its position and agreed that the 2016 CID is a Claim, thus entitling Cigna to indemnification for Defense Expenses.⁴⁰ At the same time, Cigna requested Insurers to provide similar coverage under their respective excess policies.⁴¹ Insurers maintained that Cigna was not entitled to Defense Expenses, because the 2016 CID is a Governmental Investigation.⁴² Cigna filed this suit to decide coverage.

Cigna initiated this action in March 2023⁴³ and filed its operative Amended Complaint in June 2024.⁴⁴ After extensive motion practice, Cigna filed the Cigna MSJ in April 2025, while discovery was ongoing.⁴⁵ The parties completed briefing on the

³⁶ See Ironshore Cigna MSJ Opp’n, Ex. A (Cigna’s letter requesting coverage from Chubb for, among other things, the 2016 CID).

³⁷ Cigna MSJ, Ex. 33.

³⁸ See Ironshore Cigna MSJ Opp’n, Exs. A–C.

³⁹ *Conduent State Healthcare, LLC v. AIG Specialty Ins. Co.*, 2019 WL 2612829 (Del. Super. June 24, 2019).

⁴⁰ Cigna MSJ, Ex. 4.

⁴¹ See Ironshore Cigna MSJ Opp’n, Exs. D, F, H; see also Cigna MSJ, Ex. 38 (notifying Insurers of ACE’s revised coverage position).

⁴² See Ironshore Cigna MSJ Opp’n, Exs. E, G, I.

⁴³ See Complaint (D.I. 1).

⁴⁴ See Compl.

⁴⁵ See Cigna MSJ. The limited discovery that remained outstanding when Cigna filed the Cigna MSJ does not prevent the Court from ruling on the Cigna MSJ. See *infra* n.65.

Cigna MSJ over the following month.⁴⁶ The Court heard oral argument concerning the Cigna MSJ on June 30, 2025.⁴⁷

On June 20, 2025, Defendants filed the Ironshore MSJ and Excess Insurers MSJ.⁴⁸ On July 31, 2025, Cigna filed an omnibus opposition brief responding to the Ironshore MSJ and Excess Insurers MSJ.⁴⁹ The same day, XL sent Cigna a revised coverage letter⁵⁰ “ [REDACTED]

[REDACTED]⁵¹
Ironshore and Excess Insurers timely filed reply briefs supporting their respective motions.⁵² The Court heard oral argument on the Ironshore MSJ and Excess Insurers MSJ on September 5, 2025.

⁴⁶ See Ironshore Cigna MSJ Opp’n; XL Cigna MSJ Opp’n; Plaintiff’s Reply in Support of its Motion for Summary Judgment on the First and Second causes of Action of the Amended Complaint and Counts I and II of Defendant XL Specialty Insurance Company’s Counterclaims (hereafter “Cigna MSJ Reply”) (D.I. 384).

⁴⁷ See Judicial Proceeding Worksheet for Thurs. June 5, 2025 (D.I. 309).

⁴⁸ See Ironshore MSJ; Excess Insurers MSJ.

⁴⁹ See Plaintiff’s Omnibus Response to Defendants’ Phase I Motions for Partial Summary Judgment (hereafter “Ironshore and Excess Insurers MSJs Opp’n”) (D.I. 432).

⁵⁰ See Letter to the Court from Jennifer C. Wasson Regarding Plaintiff’s Supplemental Response to Defendants’ Phase I Motions for Partial Summary Judgment (hereafter “Supp. Ltr.”), Ex. A (hereafter “Revised XL Coverage Ltr.”) (D.I. 435). Cigna asserts “the [Revised XL Coverage Ltr.] further demonstrates that XL’s summary judgment motion should be denied and Cigna’s summary judgment motion should be granted.” Supp. Ltr.

⁵¹ John G. Day’s Letter the Court in Response to Plaintiff Cigna’s August 12, 2025 Letter (hereafter “Supp. Ltr. Response”) (D.I. 437). XL insists its [REDACTED]

[REDACTED] *Id.* The Court agrees that whether the 2016 CID is a Claim is not impacted by XL’s revised coverage position [REDACTED]—rather, that determination is based on the Policy’s and 2016 CID’s language. See *infra* V.

⁵² See Reply Brief in Further Support of Certain Excess Insurer Defendants’ Phase I Motion for Partial Summary Judgment (hereafter “Excess Insurers MSJ Reply”) (D.I. 444); Reply Brief of

III. THE PARTIES' ARGUMENTS

The Motions address a single overarching issue—whether the 2016 CID is a Claim under the Policy.⁵³ Cigna argues that the 2016 CID is a Claim because it: (1) was a “written notice received by” Cigna; (2) intended to hold Cigna responsible; (3) and was “for a Wrongful Act which was committed or allegedly committed”—namely Cigna’s alleged one-way chart reviews.⁵⁴ Because there is no real dispute concerning the first and third elements,⁵⁵ the Motions focus on whether the 2016 CID evidenced the DOJ’s intent to hold Cigna responsible for a Wrongful Act.⁵⁶

Cigna contends that the 2016 CID’s purpose “was to hold Cigna responsible for alleged one-way chart reviews.”⁵⁷ Cigna cites: (1) the 2016 CID’s “nature and language”;⁵⁸ (2) the DOJ’s contemporaneous enforcement actions against other

Defendants Ironshore Specialty Insurance Company and Ironshore Indemnity Inc. in Support of Motion for Partial Summary Judgment (hereafter “Ironshore MSJ Reply”) (D.I. 445).

⁵³ See Cigna MSJ at 21–33.

⁵⁴ *Id.* at 21–22 (quoting Policy § II.C).

⁵⁵ *Id.* at 22.

⁵⁶ *Id.* at 22–32.

⁵⁷ *Id.* at 22–32. Cigna points out that the Policy does not define “intends,” but proffers the ordinary definitions “means ‘to have as one’s purpose.’” *Id.* at 22 (quoting Black’s Law Dictionary, *Intend* (12th ed. 2024)); see generally Policy (not defining “intends”). See also *Sycamore Partners Management, L.P. v. Endurance American Insurance Company*, 2021 WL 4130631, at *12 n.96 (Del. Super. Sept. 10, 2021) (“The Supreme Court has approved the use of dictionaries in construing undefined terms in insurance policies.” (citing *In re Solera Insurance Coverage Appeals*, 240 A.3d 1121, 1132 (Del 2020))).

⁵⁸ Cigna MSJ at 23 (“the 2016 Chart Review CID was not served on Cigna as a third-party witness to allege wrongdoing by others. [REDACTED]

(internal citations omitted)).

MAOs for one-way chart reviews;⁵⁹ and (3) the Tolling Agreement,⁶⁰ as supporting that position. Cigna also insists that both Delaware and sister state caselaw support finding that the 2016 CID is a Claim.⁶¹ Anticipating Insurers’ response, Cigna maintains that its interpretation “does not render the ‘Governmental Investigation’ provisions superfluous” because “there are instances in which a CID could be . . . merely a Governmental Investigation and not a Claim.”⁶²

Because Cigna contends that the 2016 CID is a Claim, it asserts that Insurers’ failure to reimburse its Defense Expenses breached the Policy.⁶³ Accordingly, Cigna asks the Court to deny summary judgment on Insurers’ Motions and to enter

⁵⁹ *Id.* at 24 (stating that the “DOJ served the 2016 [CID] on Cigna only after *qui tam* actions had targeted other MAO’s alleged one-way chart reviews[.]” “the DOJ had investigated those *qui tam* actions and publicly concluded . . . that one-way chart review violate the FCA[,] and “the Ninth Circuit had endorsed that as a valid claim.”).

⁶⁰ *Id.* at 24–25. Cigna asserts Insurers’ interpretation leads to the nonsensical conclusion that to receive coverage Cigna should have declined to sign the Tolling Agreement, forgoing an opportunity to mitigate damages, forcing the DOJ to sue. *Id.* at 25 (citing *Rhone-Poulenc Basic Chemicals v. American Motorists Insurance Company*, 616 A.2d 1192, 1197 (Del. 1992) (“[p]ublic policy clearly favors imposing upon insureds a duty to mitigate damages.”)).

⁶¹ *Id.* at 26–30. Primarily, Cigna relies on two Delaware decisions: *Conduent* and *Guaranteed Rate*. See *Conduent State Healthcare, LLC v. AIG Specialty Ins. Co.*, 2019 WL 2612829 (Del. Super. June 24, 2019); *Guaranteed Rate, Inc. v. ACE American Insurance Co.*, 2021 WL 3662269 (Del. Super. Aug. 18, 2021), *appeal refused* by 266 A.3d 212 (Del. 2021). See also *Sycamore Partners*, 2021 WL 4130631, at *16–17 (also cited by Cigna). Cigna also points to caselaw in which CL allegedly “successfully argued for the opposite ‘Claim’ determination that it seeks here.” Cigna MSJ at 30–31 (citing *Morden v. XL Specialty Insurance Co.*, 177 F. Supp. 3d 1320 (D. Utah 2016)). The Court, however, does not credit that argument, because “a party may assert contradictory positions in the same case or in a separate and distinct cause if he is acting in good faith and res judicata or collateral estoppel [(neither of which Cigna argues applies)] does not bar the assertion.” *Bruce E.M. v. Dorothea A.M.*, 455 A.2d 866, 869 (Del.1983).

⁶² Cigna MSJ at 31–32 (providing a hypothetical example of such a CID).

⁶³ *Id.* at 32.

summary judgment in its favor on Counts I and II of its Amended Complaint and on Counts I and II of XL's Counterclaim.⁶⁴

Insurers argue that the Court should hold that the 2016 CID is a Governmental Investigation not a Claim.⁶⁵ Insurers insist "[t]he applicable terms of the Policy are unambiguous."⁶⁶ Based on those plain terms, Insurers assert that the 2016 CID is not a Claim, because "it does not convey an intent to hold Cigna responsible for a

⁶⁴ *Id.* at 32.

⁶⁵ Ironshore Cigna MSJ Opp'n at 15–35. At one point, Insurers contended that Cigna's Motion was premature because Phase I discovery is ongoing. *Id.* at 35; *see generally* Excess Insurer Defendants' Rule 56(f) Response to Plaintiff's Motion for Summary Judgment on the First and Second Causes of Action of the Amended Complaint and Counts I and II of Defendant XL Specialty Insurance Company's Counterclaims (hereafter "56(f) Mot.") (D.I. 363). It is not clear whether the Ironshore MSJ and Excess Insurers MSJ obviates the 56(f) Mot. Even if the 56(f) Mot. remains pending, it does not prevent the Court from resolving the Motions. The 56(f) Mot. is explicit—Insurers only argue additional discovery is needed "if the Court decides it will consider Cigna's extrinsic evidence" regarding the Policy's interpretation. 56(f) Mot. at 3, 10–11 (arguing the Court cannot interpret the Policy using extrinsic evidence until Insurers receive discovery "related to: (1) [w]hat ACE and Cigna intended the disputed policy terms to mean when the terms were drafted and the Policy was issued; and (2) [w]hy ACE and Cigna reversed their position that the CIDs were a Governmental Investigation and not a Claim."). Insurers insist that the Court can, and "should [rule on] Cigna's Motion based on the unambiguous Policy language." *Id.* at 3. As such, the 56(f) Mot. is moot if the Policy is unambiguous. The Court agrees with Cigna that Insurers improperly label some of the evidence the Motion relies upon as "extrinsic evidence." *See* Plaintiff's Opposition to Excess Insurer Defendants' Rule 56(f) Request (hereafter "56(f) Mot. Opp'n") (D.I. 383). The "DOJ's amicus brief in *Swoben*, the Ninth Circuit's decision in *Swoben* [and other related cases], and DOJ's other enforcement actions" do not "shed light on the expectations of the parties at the time they entered into the" Policy. *Id.* at 3, 15–17; *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1233 (Del. 1997). Rather, those materials go to the circumstances in which the DOJ issued the 2016 CID. *See* 56(f) Mot. Opp'n at 15–17. Accordingly, the Court can consider that non-extrinsic evidence even if the Policy is unambiguous and without triggering Insurers' alleged need for further discovery.

⁶⁶ Ironshore Cigna MSJ Opp'n at 15–16.

wrongful act.”⁶⁷ As a Governmental Investigation, the 2016 CID does not trigger Cigna’s entitlement to “Defense Expenses.”⁶⁸

Insurers reject Cigna’s position as contrary to “the language of the CID itself,”⁶⁹ and Cigna’s previous interpretation of the 2016 CID as a “request for information.”⁷⁰ Additionally, insurers argue that the Tolling Agreement—

_____ ⁷¹_____

does not transform the 2016 CID into a claim.⁷² Insurers maintain that caselaw supports their interpretation of the CID, not Cigna’s.⁷³ Moreover, Insurers contend

⁶⁷ *Id.* at 16–18 (noting the Policy’s definition of Governmental Investigation includes “a *civil investigative demand* (‘CID’) from any state or federal government or regulatory agency . . . for documents, records, electronic materials or other data.”). Rather, the 2016 CID “indicates [DOJ] is investigating to determine whether there has even been a wrongful act.” *Id.* at 17 (“[t]he [2016] CID does not state that Cigna has acted improperly and therefore owes damages resulting from that improper conduct—it states that it is investigating Cigna’s billing practices.”). Cigna asserts this argument relies on an interpretation of the Policy—a CID cannot be a claim—that Insurers previously conceded was incorrect. *See* Cigna MSJ Reply at 6–8 (citing Cigna MSJ, Exs. 43 (admitting a CID “may be a Claim.”); 44 (stating a CID “can be a claim.”)).

⁶⁸ Ironshore Cigna MSJ Opp’n at 18–19. Instead, “if a CID does ripen into a ‘Claim,’ the Policy allows for up to _____ of ‘Governmental Investigation Expense’ to be applied to the Policy’s per-Claim self-insured retention.” *Id.* at 18 (citing Policy V.A.3).

⁶⁹ *Id.* at 19–20; *see* 2016 CID (_____)

⁷⁰ *Id.* at 20 (citing Ironshore Cigna MSJ Opp’n, Exs. K at Item 8, Note 21.E; L at Item 8, Note 22D).

⁷¹ Tolling Agreement.

⁷² Ironshore Cigna MSJ Opp’n at 21–22. Similarly, Insurers reject Cigna’s reliance on the “2017–2018 policy language” as irrelevant to interpretation of the unambiguous Policy. *Id.* at 22–23. The Court agrees that the Policy is unambiguous. *See infra* V. Accordingly, the Court does not consider the 2017–2018 policy’s terms, which constitute extrinsic evidence of the Policy’s meaning. *See Insurance Coverage Office v. Perkins-Johnson*, 2021 WL 3702576, at *3 (Del. Super. Aug. 19, 2021) (“[w]here the language of an insurance policy is clear and unambiguous, the parties’ intent is ascertained by giving effect to the plain meaning of the policy’s terms and provisions, *without resort to extrinsic evidence*.” (internal quotes omitted) (emphasis added)).

⁷³ Cigna MSJ at 23–31 (“Cigna’s entire argument attempts to deflect from the simple fact that CIDs are investigative tools for the purpose of fathering information, and that not ever investigation

that the DOJ’s enforcement actions against other MAOs does not support Cigna’s argument.⁷⁴ Rather, these actions show “the distinction between the government’s intent and actions when it is merely investigating, as opposed to when it actually intends to hold an entity responsible for some alleged violation[.]”⁷⁵

Even if the Court grants the Cigna MSJ, Insurers oppose Cigna’s request for “judgment on reimbursement value” as “premature,” because “Phase 1 is limited to whether or not the [2016] CID is a Claim.”⁷⁶

IV. STANDARD OF REVIEW

Summary judgment is proper when “there are no material issues of fact in dispute and the moving party is entitled to judgment as a matter of law.”⁷⁷ The Court views “[t]he facts, and all reasonable inferences . . . in the light most favorable to the non-moving party.”⁷⁸ The question “is whether any rational finder of fact could find, on the record presented . . . that the substantive evidentiary burden has been

leads to allegations of wrongdoing.” (citing *Diamond Glass Companies, Inc. v. Twin City Fire Ins. Co.*, 2008 WL 4613170, at *4 (S.D.N.Y. Aug. 18, 2008); *Biochemics, Inc. v. AXIS Reinsurance Co.*, 924 F.3d 633, 637, 640 (1st Cir. 2019)). Regarding *Conduent* specifically, Insurers argues this case is differentiable because: (1) the Policy’s Claim Definition does not include a “written demand for non-monetary relief”; and (2) the policy at issue in *Conduent* did not have a separate definition of Governmental Investigation. *Id.* at 26–27 (citing *Conduent*, 2019 WL 2612829, at *1–2, 6).

⁷⁴ *Id.* at 31–35.

⁷⁵ *Id.* at 33.

⁷⁶ *Id.* at 35–36.

⁷⁷ *Lyondell Chemical Co. v. Ryan*, 970 A.2d 235, 241 (Del. 2009).

⁷⁸ *Id.*

satisfied.”⁷⁹ Contract interpretation is a question of law.⁸⁰ Hence, “[s]ummary judgment is an appropriate process for the enforcement of unambiguous contracts because there is no material dispute of fact for the court to resolve.”⁸¹ Yet, summary judgment is only appropriate if the contract is unambiguous.⁸²

V. DISCUSSION

The Court must determine whether the 2016 CID is a Claim as defined in the Policy. Provided it is, Cigna has also requested an order directing the Insurers to reimburse it for the costs it incurred defending the 2016 CID. As explained below, the Court finds that the 2016 CID is a Claim but declines to issue Cigna’s requested order.

A. The 2016 CID is a Claim.

This question invokes well-settled principles of contract interpretation.⁸³ The Parties are bound by the Policy’s “[c]lear and unambiguous language,” and is given its “ordinary and usual meaning.”⁸⁴ The Court only considers extrinsic evidence to

⁷⁹ *Cerberus Intern., Ltd. v. Apollo Management, L.P.*, 794 A.2d 1141, 1150 (Del. 2002). The judge who decides the summary judgment motion may not weigh qualitatively or quantitatively the evidence adduced on the summary judgment record. *Id.*

⁸⁰ *Exelon Generation Acquisitions, LLC v. Deere & Co.*, 176 A.3d 1262, 1266–67 (Del. 2017).

⁸¹ *Comet Systems, Inc. Shareholders’ Agent v. MIVA, Inc.*, 980 A.2d 1024, 1030 (Del. Ch. 2008).

⁸² *United Rentals, Inc. v. RAM Hldgs., Inc.*, 937 A.2d 810, 830 (Del. Ch. 2007).

⁸³ *See ConAgra Foods, Inc. v. Lexington Ins. Co.*, 21 A.3d 62, 69 (Del. 2011).

⁸⁴ *O’Brien v. Progressive N. Ins. Co.*, 785 A.2d 281, 288 (Del. 2001) (internal quotes omitted).

resolve an interpretive issue when the contract is ambiguous.⁸⁵ A provision is ambiguous if it is “fairly susceptible [to] different interpretations[.]”⁸⁶

The Parties concede that the Policy’s definition of Claim is unambiguous.⁸⁷ The Policy defines a Claim as “any written notice received by [Cigna] that a person or entity intends to hold [Cigna] responsible for a Wrongful Act[.]”⁸⁸ The Parties agree that under this definition, the relevant question is whether the DOJ’s purpose in issuing the 2016 CID was “to hold Cigna responsible for alleged one-way chart reviews.”⁸⁹ Thus, the parties’ dispute is not one of contract interpretation, but rather how the 2016 CID falls within the Policy’s plain terms. Deciding that issue requires considering the text of the 2016 CID itself.

The 2016 CID is a Claim, not a Governmental Investigation. The fact that the Policy’s definition of Governmental Investigation includes a “civil investigative demand” “is persuasive, not conclusive,”⁹⁰ that the 2016 CID is not a Claim. However, this terminology does not mandate a finding that the 2016 CID is not a

⁸⁵ See *Citadel Holding Corp. v. Roven*, 603 A.2d 818 (Del. 1992).

⁸⁶ *Eagle Indus.*, 702 A.2d at 1232. See also *Axis Reinsurance Co. v. HLTH Corp.*, 993 A.2d 1057, 1062 (Del. 2010) (“An insurance contract is not ambiguous simply because the parties do not agree on its proper construction.” (citations omitted)).

⁸⁷ See Cigna MSJ at 3–4, 19, 21; Ironshore Cigna MSJ Opp’n at 15 (“The applicable terms of the Policy are unambiguous, as acknowledged and admitted by Cigna itself in its Motion.”).

⁸⁸ Policy § II.C.

⁸⁹ Cigna MSJ at 22 (citing Black’s Law Dictionary, *Intend* (12th ed. 2024) (“to have as one’s purpose.”)); see Ironshore Cigna MSJ Opp’n at 19–21.

⁹⁰ *I Am Athlete, LLC v. IM EnMotive, LLC*, 2024 WL 4904685, at *6 (Del. Super. Nov. 27, 2024) (citations omitted).

Claim.⁹¹ Rather, Delaware caselaw shows that a government CID seeking information to investigate specific alleged wrongdoing by recipient, demonstrates an intent to hold the receiver responsible for that conduct.⁹²

In *Conduent* this Court considered whether a CID issued by the Texas Attorney General was a “Claim ‘alleging a wrongful act.’”⁹³ The *Conduent* court noted “the CID was a request for information in connection with an investigation . . . initiated by law enforcement, and clearly was focused on the insured.”⁹⁴ The CID’s stated purpose “was to investigate the possibility of wrongful acts that may violate the law.”⁹⁵ In that context, “the Court [was] not persuaded that investigating an alleged unlawful act by the insured, is different from actually alleging an unlawful act. This is a distinction without a difference.”⁹⁶

The *Sycamore Partners* court, analyzed *Conduent* and found it stood for the proposition that “[a]s a practical matter . . . the government initiates a ‘claim’ simply by imposing its authority on the insured.”⁹⁷ The court noted “insureds cannot simply decline to cooperate with government investigations[;] [o]therwise, the insureds

⁹¹ Policy § II.L.

⁹² *Conduent*, 2019 WL 2612829, at *5–6.

⁹³ *Id.* at *1–2, 5.

⁹⁴ *Id.* at *6.

⁹⁵ *Id.*

⁹⁶ *Id.* at *5.

⁹⁷ *Sycamore Partners*, 2021 WL 4130631, at *17.

would risk liability (e.g., criminal sanctions) for the very thing investigated.”⁹⁸ Then-judge LeGrow differentiated the governmental issued CID in *Conduent* from a private demand for information at issue in *Sycamore Partners*, “because private parties lack the government’s inherent police power.”⁹⁹

Here, the government, rather than a private party, issued the 2016 CID. Therefore, under the *Conduent* standard, the 2016 CID is a Claim. The DOJ issued the 2016 CID [REDACTED]

[REDACTED]¹⁰⁰ Thus, like the CID in *Conduent*, the 2016 CID requested information as part of a government investigation concerning actions by the recipient, Cigna, and suggested that conduct violated a specific statute.¹⁰¹ Because the DOJ is a governmental body with inherent police powers, Cigna could not simply refuse to cooperate with the 2016 CID without risking liability or sanctions. Accordingly, as in *Conduent*, the Court here concludes that the 2016 CID’s reference to an “investigation” is not meaningfully different from an accusation that Cigna violated 31 U.S.C. § 3729—that is “a distinction

⁹⁸ *Id.* (citing *Conduent*, 2019 WL 2612829, at *4 (pointing out governmental entities “could compel compliance without judicial intervention.”)).

⁹⁹ *Id.*

¹⁰⁰ 2016 CID.

¹⁰¹ *Id.*; see *Conduent*, 2019 WL 2612829, at *5–6.

without a difference.”¹⁰² Hence, the 2016 CID sought to hold Cigna responsible for one-way chart reviews, and as such, is a Claim under the Policy.¹⁰³

Contrary to Insurers’ suggestion, this holding does not render the Policy’s provisions concerning Governmental Investigations superfluous. Of course, an “insurance contract should be read as a whole, giving each provision and term effect, so as not to render any part of the policy mere surplusage.”¹⁰⁴ Yet, a clause is *only* rendered superfluous if a proffered interpretation gives it “*no meaning*.”¹⁰⁵ A determination that the 2016 CID is a Claim does not strip the Policy’s Governmental Investigation provisions of meaning because the Policy still applies to CIDs that do not become Claims. For example, governmental authorities regularly issue CIDs to “unrelated third part[ies] who might have . . . information” relevant to an ongoing investigation.¹⁰⁶ Thus, Cigna could have received a CID seeking information regarding its billing practices as part of a DOJ investigation into whether a

¹⁰² *Conduent*, 2019 WL 2612829, at *5; *See* 2016 CID.

¹⁰³ The Tolling Agreement is consistent with this holding.

¹⁰⁴ *Noranda Aluminum Holding Company v. XL Insurance America, Inc.*, 2019 WL 1399956, at *3 (Del. Super. Mar. 21, 2019) (citations omitted).

¹⁰⁵ *Boardwalk Pipeline Partners, LP v. Bandera Master Fund LP*, 288 A.3d 1083, 1117 (Del. Dec. 19, 2022).

¹⁰⁶ *Conduent*, 2019 WL 2612829, at *5.

competitor violated the FCA.¹⁰⁷ In that circumstance, the CID would constitute a Governmental Investigation but not a Claim because it would not seek to hold Cigna responsible for any violation. If that Governmental Investigation later developed into a Claim against Cigna, however, Cigna would be entitled to an erosion of up to [REDACTED] of its self-insured retention, giving meaning to the provisions establishing an erosion for Governmental Investigation Expenses.¹⁰⁸ Accordingly, holding that the 2016 CID is a Claim does not violate the contract interpretation principle against surplusage.

B. Cigna is Entitled to Reimbursement, but the Amount Cannot be Determined on the Record Before the Court.

The 2016 CID is a Claim under the definition in the Policy. This determination does not, however, mandate an immediate order that the Insurers pay Cigna the [REDACTED] [REDACTED]¹⁰⁹ it incurred in Chart Review Defense Expenses. There are still other Phase 1 issues, such as “if the defense costs incurred after [the 2016 CID was served] are reasonable, legal fees and costs,”¹¹⁰ and whether they meet the Policy’s definition of

¹⁰⁷ Such a CID would “relate to” Cigna’s provision of Managed Care Professional Services, as required by the Policy’s definition of Governmental Investigation. *See* Policy § II.L.

¹⁰⁸ Policy § V.A.3.

¹⁰⁹ Cigna claims that, because it provided its invoices to Insurers earlier in this litigation and attached them to this motion, this issue is ripe. Cigna MSJ Reply at 19–22. Although Cigna provided the relevant invoices as a part of discovery, it did so prior to bifurcation of this action. *See* Cigna MSJ Reply, Supplemental Exs. 46, 47 (served on December 28, 2023, and January 9, 2024, respectively, well before the formalization of bifurcation on July 12, 2024).

¹¹⁰ Excess Insurers MSJ, Ex. L at 23:11–24:7.

Defense Expenses.¹¹¹ The Court rejects Cigna’s proposed rule¹¹² that its Chart Review Defense Expenses are reasonable as a matter of law simply because it paid them out-of-pocket without a guarantee of reimbursement.¹¹³ Delaware law requires the finder of fact to use a multi-factor test to determine the reasonableness of defense costs, considering:

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
- (3) The fees customarily charged in the locality for similar legal services.
- (4) The amount involved and the results obtained.
- (5) The time limitations imposed by the client or by the circumstances.
- (6) The nature and length of the professional relationship with the client.
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services.
- (8) Whether the fee is fixed or contingent.¹¹⁴

The Court cannot reasonably resolve these issues on the thin record before it at this time.

The Insurers are directed to conduct a review of Cigna’s Chart Review Defense Expenses with the understanding that the 2016 CID is a Claim. That review shall take place within 45 days of this Order. If the Insurers have reasonable bases for contesting

¹¹¹ Policy § II.G (defining Defense Expenses as “ordinary and customary costs, charges, fees and expenses incurred by the Insurer or the Insured, with the consent of the Insurer where required . . . in the investigation, adjustment, defense, or appeal of a Claim, provided that Defense Expenses shall not include remuneration, salaries, overhead, fees or benefit expenses of any Insured.” (emphasis omitted)).

¹¹² Cigna MSJ Reply at 21–22.

¹¹³ See *TIAA-CREF Individual & Institutional Servs., LLC v. Ill. Nat’l Ins. Co.*, 2016 WL 6534271, at *16–17 (Del. Super. Oct. 20, 2016) (“While it is true that [insured] had an incentive to minimize its defense costs because it was paying them out of pocket, the [Court] must consider the *Cox* factors.”).

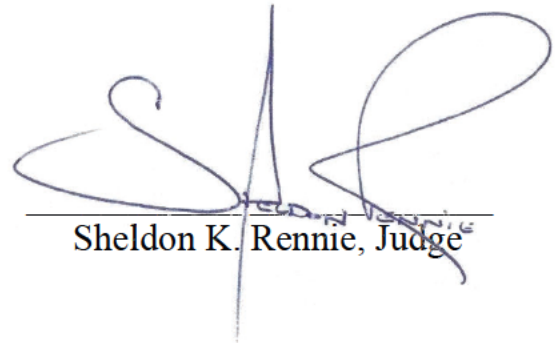
¹¹⁴ *Id.* at *16 (citing *Gen. Motors Corp. v. Cox*, 304 A.2d 55, 57 (Del. 1973)).

Cigna's fees, the proper determination of the quantum of those fees will be made in a later proceeding.¹¹⁵ The portion of Cigna's Motion for Summary Judgment requesting an order for [REDACTED] in Chart Review Defense Fees is DENIED.

VI. CONCLUSION

For the foregoing reasons, the Court **GRANTS-in-part and DENIES-in-part** Cigna's Motion for Summary Judgment, **DENIES** Ironshore's Motion for Partial Summary Judgment, and **DENIES** Excess Insurers Motion for Partial Summary Judgment.

IT IS SO ORDERED.



Sheldon K. Rennie, Judge

¹¹⁵ The Court is hopeful that the parties will fulfill their representations that disputes of this type are “ordinary insurance company business functions that they do for every claim[.]” and that the Insurers will be able to “do [their] job to review these invoices, like [they] do for many claims[.]” Excess Insurers MSJ, Ex. L at 23:18–20, 24:3–5.