ORAL ARGUMENT NOT YET SCHEDULED

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES OF AMERICA, ET AL., Plaintiffs-Appellees, v. ANTHEM, INC., Defendant-Appellant, and CIGNA CORP., Defendant-Appellee.	No. 17-5024 **PUBLIC COPY—SEALED MATERIAL DELETED**

RESPONSE OF THE UNITED STATES AND PLAINTIFF STATES IN OPPOSITION TO DEFENDANT-APPELLANT'S MOTION TO EXPEDITE

Anthem, Inc. has filed an emergency motion asking this Court to expedite consideration of this appeal from the district court's order enjoining Anthem's merger with Cigna Corp.

In the last 24 hours, however, Cigna has filed a lawsuit against Anthem, seeking to "confirm that the merger agreement [between Anthem and Cigna] has been lawfully terminated." Cigna 8-K at 1 (Feb. 14, 2017) (attached as Exhibit A). According to Cigna, "there is no feasible path to ever completing the merger, let alone by April 30, 2017, and therefore it would be in the best interests of our

clients, customers and shareholders to move forward with a sovereign growth strategy." *Id.* at 1. Anthem disagrees and announced earlier this morning that it has filed a counter-suit against Cigna.[1]

These developments gut Anthem's arguments for expedited review, all of which are based on harms that would purportedly befall Anthem, Cigna, and the public if this Court did not review the district court's decision enjoining the Anthem-Cigna merger before the merger agreement's closing deadline—which Anthem argues is April 30, and Cigna believes has already passed. *See id.* at 2. Anthem argues that expedited review is necessary because Cigna would likely terminate the agreement if the merger is not closed by that date. But since Cigna has *already* terminated the agreement, expedited review—and perhaps any appellate review—would be futile. Moreover, even putting these developments aside, expedited review would still not prevent Anthem's asserted injuries because the merger cannot close until approved by state insurance regulators, which by Anthem's own representation below would take at least 120 days from the conclusion of this litigation. If this appeal nevertheless goes forward, the public interest strongly weighs in favor of a careful and thorough review of "the largest

[1] *See* http://ir.antheminc.com/phoenix.zhtml?c=130104&p=irol-newsArticle&ID=2246154.

merger in the history of the healthcare industry." Mot. 2. For these and additional reasons detailed below, Anthem's motion should be denied.

BACKGROUND

[redacted]

At the outset of the litigation, Anthem represented to the district court that, "Anthem's ability to close its acquisition of Cigna depends upon this action concluding (without an injunction) before the end of 2016." Anthem's Explanation of Its Positions as to Timing 3 (Dist. Ct. Dkt. No. 28).[2] Anthem explained that it had to secure approval of its acquisition of Cigna from insurance regulators in 26 states before it could close the merger, and Anthem stated "that it will need at least 120 days to secure the remaining approvals by State insurance regulators." *Id.* [redacted]

[2] Citations to "Dist. Ct. Dkt. No." reference the docket entries in *United States v. Anthem, Inc.*, No. 1:16-cv-1493 (D.D.C.).

[redacted] Following extensive post-trial briefing, the court entered its final decision enjoining the merger on February 8, 2017. Joint Appendix (JA) 208. In its order, which was accompanied by a 140-page opinion, the district court concluded that "the proposed merger is likely to lessen competition substantially in the market for the sale of commercial health insurance to national account customers in the fourteen Anthem territories and in the market for the sale of commercial health insurance to large group customers in the Richmond, Virginia market," "in violation of section 7 of the Clayton Act, 15 U.S.C. § 18." *Id.*[3]

[3] [redacted]

Anthem has appealed from the district court's decision. It now asks this Court to expedite briefing, argument, and consideration of this case.

Yesterday, Cigna notified the Securities Exchange Commission that it has terminated its merger agreement with Anthem. Ex. A at 2. Cigna also filed suit against Anthem in the Delaware Court of Chancery, seeking declaratory judgment to confirm the agreement was lawfully terminated, to collect a break-up fee, and to seek additional damages. *Id.*

Just this morning, Anthem announced that it has filed counter-suit against Cigna regarding Cigna's termination of the agreement. It claims that Cigna has not terminated the agreement and cannot do so at all.[4]

LEGAL STANDARD

Absent the existence of certain statutorily enumerated circumstances—none of which is present here—a court will not expedite consideration of a matter unless "good cause" is shown. 28 U.S.C. § 1657(a). In this Circuit, motions to expedite are "very rarely" granted. *D.C. Circuit Handbook of Practice and Internal Procedures* 33 (2017). To establish the requisite good cause,

> [t]he movant must demonstrate that the delay will cause irreparable injury and that the decision under review is subject to substantial challenge. The Court also may expedite cases in which the public generally, or in which persons not before the Court, have an unusual

[4] *See* http://ir.antheminc.com/phoenix.zhtml?c=130104&p=irol-newsArticle&ID=2246154.

> interest in prompt disposition. The reasons must be strongly compelling. [*Id.*]

ARGUMENT

Anthem argues that (1) absent expedited briefing, argument, and consideration, Anthem will suffer irreparable harm, (2) the district court's order is subject to substantial challenge, and (3) the public interest supports expedited review. Anthem is wrong on all counts.

A. Anthem Has Not Demonstrated It Will Suffer Irreparable Harm Absent Expedited Consideration.

1. Expedited Review Would Be Futile. Anthem asserts that absent expedition, the merger could terminate, Cigna and Anthem might become embroiled in litigation over termination, and this appeal would be rendered practically moot. Mot. 5-7. But all of this has already come to pass. Cigna has terminated the merger agreement, and litigation over the termination has commenced. *See* Ex. A at 2. Whether the consummation of the proposed merger would violate the Clayton Act, as the district court concluded, is beside the point if there is no merger. Expedited review will do nothing to change these facts and thus will do nothing to prevent the harm that Anthem has identified in its motion.

Even before this latest and dispositive development, however, expedited review was futile because it would not have prevented Anthem's asserted injuries. If Anthem got everything it wanted and the Court were to issue a decision

favorable to Anthem before April 30, 2017, there would remain a major obstacle preventing the merger from closing: "Anthem still requires certain state insurance regulatory clearances" before it can close. Mot. 7. As Anthem explained to the district court, state regulatory review is currently on hold pending the final resolution of this litigation. Anthem's Explanation of Its Positions as to Timing 2-3 (Dist. Ct. Dkt. No. 28). By Anthem's own estimation, then, renewal of state regulatory review is likely to continue only following a final judgment on the merits—but that is something that even a decision from this Court in favor of Anthem will not provide.

At best, Anthem is looking at a remand to the district court for further proceedings because the district court has not resolved all the claims that the government asserted below. The court held that the proposed merger should be enjoined because it "is likely to lessen competition substantially in the market for the sale of commercial health insurance to national account customers in the fourteen Anthem territories and in the market for the sale of commercial health insurance to large group customers in the Richmond, Virginia market." JA208.

[redacted]

[redacted] Therefore, even if Anthem succeeds in this appeal, "there should be a remand for further proceedings to permit the trial court to make the missing findings" as to the government's other theories for relief. *Pullman-Standard v. Swint*, 456 U.S. 273, 291 (1982); *see, e.g.*, *Corrigan v. D.C.*, 841 F.3d 1022, 1039 (D.C. Cir. 2016); *United States v. TDC Mgmt. Corp.*, 827 F.3d 1127, 1132 (D.C. Cir. 2016).

Then, after remand, assuming the district court entered judgment in favor of Anthem (and there were no appeals or Anthem won all appeals), Anthem would *still* need to obtain state regulatory clearances before closing. Anthem baldly declares that "a favorable ruling by this Court prior to . . . April 30, 2017, will allow the clearances to be obtained and the Merger to close." Mot. 7. But Anthem provides no support for this declaration, which is flatly contradicted by Anthem's representations in the district court.

Before the district court, Anthem represented that, "[a]s a practical matter, . . . Anthem's ability to close its acquisition of Cigna depends upon this action concluding (without an injunction) before the end of 2016" because "Anthem

expects that it will need at least 120 days to secure the remaining approvals by State insurance regulators." Anthem's Explanation of Its Positions as to Timing 3 (Dist. Ct. Dkt. No. 28). And Anthem backed this up with six sworn declarations by expert counsel assisting Anthem in securing approvals from the state insurance regulatory bodies. Decl. of Jared R. Danilson (Dist. Ct. Dkt. No. 28-1) (generally); Decl. of Kathleen D. Monnes (Dist. Ct. Dkt. No. 28-3) (Connecticut); Decl. of Joel A. Glover (Dist. Ct. Dkt. No. 28-6) (Colorado); Decl. of Julie March Pomerantz (Dist. Ct. Dkt. No. 28-8) (Georgia); Decl. of Steven J. Lauwers (Dist. Ct. Dkt. No. 28-10) (New Hampshire); Decl. of Richard B. Walsh Jr. (Dist. Ct. Dkt. No. 28-12) (Missouri).

Declarant Danilson, for example, explained that the 120-day timeline was "driven largely by statutory requirements for public hearings" in the states for which review is currently suspended. Danilson Decl. ¶ 5; *id.* ¶ 8 ("Some state regulations also require public hearings preceded by notice periods."). "In these public hearing states, . . . the timeline from [the Form A filing] to public hearing and decision is typically 60 to 120 days in a non-politicized environment." *Id.* ¶ 15. Thus, Danilson explained, "the state insurance regulators must re-start their review no later than January 1, 2017 so that Anthem can obtain the remaining approvals by the April 30, 2017 deadline." *Id.* ¶ 6. As Anthem explained to the district court, state regulatory review is currently on hold pending the final

resolution of this litigation. Anthem's Explanation of Its Positions as to Timing 2-3 (Dist. Ct. Dkt. No. 28). And although Anthem has purported to "make every effort to urge the states to continue their review in parallel with the federal lawsuit, . . . this effort is extremely unlikely to succeed where a state has already expressly suspended consideration pending litigation as Connecticut, Colorado, Georgia, and New Hampshire have done here." Decl. of Jared R. Danilson ¶ 7 (Dist. Ct. Dkt. No. 28-1).

Having suspended regulatory review in light of the government's lawsuit, the states are highly unlikely to restart that review now, after the district court has enjoined the transaction and Cigna has terminated the merger agreement. We are already well past the point that Anthem's own declarant represented was the "no later than" date for renewal of state regulatory reviews, and Anthem is further than ever from securing those approvals. Accordingly, expedited review will do nothing to prevent Anthem's alleged harms.

2. Anthem's Asserted Injuries Are Not Irreparable. The injuries that Anthem identifies also are not irreparable. They are all caused by the agreed-upon closing deadline in the Anthem-Cigna merger agreement.[5] If the parties had

[5] Anthem's representation about the significance of that closing deadline in its motion to this Court is inconsistent with Anthem's statement in this morning's press release, which contends that Cigna cannot terminate the agreement, at all. *See* http://ir.antheminc.com/phoenix.zhtml?c=130104&p=irol-newsArticle&ID=2246154.

wished to extend the closing deadline for the agreement, they certainly could have.[6] As this Court recognized in *FTC v. H.J. Heinz Co.*, 246 F.3d 708 (D.C. Cir. 2001), "[i]f the merger makes economic sense now," it should likewise "do so later." *Id.* at 726. Any harm arising from the failure to close the merger is therefore not a function of the pace of appellate review; it is instead a result of the parties' actions under their merger agreement.

Harm resulting from the operation of "a freely negotiated contractual arrangement" is not irreparable because it is "self-inflicted." *Fish v. Kobach*, 840 F.3d 710, 753 (10th Cir. 2016) (discussing *Salt Lake Tribune Publ'g Co. v. AT&T Corp.*, 320 F.3d 1081, 1106 (10th Cir. 2003), and *Davis v. Mineta*, 302 F.3d 1104, 1116 (10th Cir. 2002), *abrogated on other grounds as explained in Diné Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276, 1281-82 (10th Cir. 2016)). This rule is widely recognized.[7] Indeed, a contrary rule would allow parties to

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[6] *See, e.g.*, Aetna 8-K at 2 (June 24, 2016) (parties to Aetna-Humana merger agreement "elected to extend the 'End Date' (as defined in the Merger Agreement) from June 30, 2016 to December 31, 2016"); Aetna 8-K at 2 (Dec. 22, 2016) (parties to Aetna-Humana merger agreement "each agreed, in order to extend the 'End Date' . . . to waive until . . . February 15, 2017 its right to terminate the Merger Agreement due to a failure of the Mergers to have been completed on or before December 31, 2016").

[7] *See, e.g.*, *Livonia Props. Holdings, LLC v. 12840-12976 Farmington Rd. Holdings, LLC*, 399 F. App'x 97, 104 (6th Cir. 2010); *Second City Music, Inc. v. Chicago*, 333 F.3d 846, 850 (7th Cir. 2003); *Caplan v. Fellheimer Eichen Braverman & Kaskey*, 68 F.3d 828, 839 (3d Cir. 1995); *Hirschfeld v. Bd. of Elections in City of N.Y.*, 984 F.2d 35, 40 (2d Cir. 1993); *San Francisco Real*

force preliminary relief or expedited review in every case by virtue of a voluntarily adopted deadline.

In *Davis*, for example, the Tenth Circuit applied a similar analysis to conclude that certain state defendants would not be irreparably harmed by a preliminary injunction against a highway project that had received insufficient environmental review. 302 F.3d at 1109-10. The state defendants had argued against the injunction by pointing to "costs that will be incurred . . . based on the delays experienced and anticipated by this litigation." *Id.* at 1116. The court rejected that harm as "self-inflicted." *Id.* The state defendants had "'jumped the gun'" when they "enter[ed] into contractual obligations that anticipated a pro forma result" in the environmental-review process. *Id.* They would not be heard to complain that the process took longer than they expected because "the state defendants are largely responsible for their own harm." *Id.* Likewise, Anthem assumed the risk that the merger would not be approved by the contractual deadline—and the consequences of that assumption are of its own making.

Estate Inv'rs v. Real Estate Inv. Trust of Am., 692 F.2d 814, 818 (1st Cir. 1982); *Lee v. Christian Coal. of Am., Inc.*, 160 F. Supp. 2d 14, 33 (D.D.C. 2001). *Cf. Grocery Mfrs. Ass'n v. EPA*, 693 F.3d 169, 177 (D.C. Cir. 2012) (where petitioners take action made available by challenged regulation "voluntarily, any injury they incur as a result is a 'self-inflicted harm' not fairly traceable to the challenged government conduct").

B. The District Court's Order Is Not Subject To Substantial Challenge.

Anthem challenges the district court's finding that the alleged efficiencies of the merger (supposed medical cost savings) do not outweigh the anticompetitive effects of the merger. *See* Mot. 7-8; [redacted]. No court has ever held that efficiencies justified an otherwise anti-competitive merger. *Cf. Saint Alphonsus Med. Ctr.-Nampa Inc. v. St. Luke's Health Sys., Ltd.*, 778 F.3d 775, 789 (9th Cir. 2015) ("none of the reported appellate decisions have actually held that a § 7 defendant has rebutted a prima facie case with an efficiencies defense"). And the district court had good reason to reject that defense here.

[redacted]

[8] *See* U.S. Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines § 4 (2010) (explaining that "merger-specific efficiencies" are "only those efficiencies likely to be accomplished with the proposed merger and unlikely to be accomplished in the absence of either the proposed merger or another means having comparable anticompetitive effects").

[redacted] To prevail on appeal, therefore, Anthem would need to demonstrate that these findings were "clearly erroneous," Fed. R. Civ. P. 52(a)(6)—something Anthem is simply unable to do. Even Cigna agrees. *See* Ex. A at 1 ("Judge Jackson's decision to block the merger was based on numerous factual determinations—and does not decide certain of the government's arguments—all of which make a swift and successful appeal highly unlikely."). Thus, Anthem does not raise a substantial challenge to the district court's order.

C. Expedited Review Is Not In The Public Interest.

Anthem separately argues that expedited review is warranted because the merger is in the public interest. Mot. 8-10. But Anthem conflates public interest *in expedited review* with the supposed public interest *in approval of the merger*. It does not offer a single reason why the public has any interest in expedited consideration of the case, nor could it, for the public interest weighs against rushing this case through the appellate process.[9]

As Anthem observes, "[t]his case concerns the largest merger in the history of the healthcare industry." Mot. 2. Both the merger and this lawsuit have received substantial attention throughout the healthcare industry and in the press.

[9] Anthem touts the public benefit that the merger affords to Cigna's shareholders as a reason to expedite review. *See* Mot. 9. Cigna, of course, has terminated the merger agreement and sued Anthem to confirm the legality of that termination. Cigna's board, which represents Cigna's shareholders, thus has a contrary view of the merger's benefits for those shareholders.

The district court's days-old injunction order has already attracted the attention of organizations in the healthcare industry who have indicated an interest in participating in the appeal as amici. The public interest, therefore, supports a review schedule that accommodates the widespread interest in this litigation. Anthem's proposed schedule does not. It sets a break-neck pace for briefing, leaves no room for amici filings, suggests that the Court forgo oral argument (Mot. 2), and does not allow for the careful deliberation that a case of this magnitude and complexity demands. Anthem's proposed schedule is antithetical to the public interest and should be rejected. The Court should enter an order setting forth the usual schedule for merits briefing, subject to the modification requested below (at 16-17).

The Court should also schedule the case for oral argument because this is not the type of case for which argument "is not needed." Cir. R. 34(j)(1). Anthem's appeal asks the Court to decide, among other things, whether so-called medical cost savings in the form of lower reimbursement rates forced on providers through the proposed merger of Anthem and Cigna can justify an otherwise anticompetitive merger. *See* Br. 2. Were the Court to reach that question (and the government believes it should not), the answer could affect all healthcare-industry merger litigation in the District going forward—and a case of that potential significance demands oral argument. Moreover, Anthem asks the Court to reverse the district

court's order in full and "rule for Anthem, permitting the proposed merger of Anthem and Cigna to proceed." *Id.* at 57. Before entertaining a request for such sweeping relief against a merger challenge brought by the United States, eleven states, and the District of Columbia, the Court should allow the government to present oral argument.

* * *

Whether or not this Court grants Anthem's motion to expedite, the government requests at least 45 days from this Court's entry of a Scheduling Order to file its merits brief.[10] This is longer than the usual 30-day period allocated for an appellee brief—but in the usual case, there is substantially more time following the decision on review before the appellant notices an appeal, before the record is filed, and before the appellant files its opening brief. Anthem's filing of its opening brief five days after the district court entered its order has severely truncated the period of time that parties usually have to review the record prior to the commencement of briefing (40 days from the date that the record is filed). *See* Fed. R. App. P. 31(a)(1).

[10] The government continues to assess developments in the dispute and litigation between Anthem and Cigna over the merger agreement and whether those developments warrant a stay of briefing in this Court or dismissal of this appeal as moot.

The government requests 45 days because that is the amount of the time it will need to review the massive trial record, which includes 4,500-plus pages of trial testimony, over 100 deposition transcripts, and more than 1,400 exhibits. That period of time is also necessary to allow the United States and twelve different state attorneys general to endeavor to file a joint brief, coordinate their approach, and secure the appropriate approvals for the final brief. This is *less* time than the appellees were given in the *FTC v. H.J. Heinz* case that Anthem cites (Mot. 6) as being decided on an expedited basis. *See* Per Curiam Order, *FTC v. H.J. Heinz*, No. 00-5362 (Nov. 9, 2000) (appellees' brief due 50 days after scheduling order and 72 days after the decision under review). The government also requests that the Court's schedule build in time for the filing of amici briefs.

CONCLUSION

For the foregoing reasons, the Court should deny Anthem's motion in full. Separately, the government request at least 45 days from the date of the Scheduling Order, to file their brief.

Dated: February 15, 2017

Respectfully submitted,

/s/ Scott A. Westrich

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 3,907 words, excluding the portions exempted by Fed. R. App. P. 32(f).

/s/ Scott A. Westrich
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CERTIFICATE OF SERVICE

I certify that on February 15, 2017, I caused the public, redacted version of the foregoing to be filed through this Court's appellate CM/ECF filer system, which will serve a notice of electronic filing on all registered counsel.

In addition, I caused two paper copies of the sealed, unredacted version of the foregoing and two paper copies of the public, redacted version to be served by hand delivery on:

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Exhibit A

EX-99.2 3 ex99-2 htm EXHIBIT 99.2

Exhibit 99.2

Q & A
February 14, 2017

1. **What did the District Court decide?**

   On February 8, 2017, the U.S. District Court for the District of Columbia issued an order enjoining the proposed merger between Cigna Corporation and Anthem, Inc. Judge Jackson's decision to block the merger was based on numerous factual determinations, including:

   - National Accounts: Judge Jackson found that the merger would result in a level of market concentration that would be presumptively unlawful in the market for national accounts in the 14 states where Anthem is the Blue Cross Blue Shield licensee. She also concluded that the merger would result in higher prices for the ASO insurance that Anthem and Cigna sell and that it would have other anticompetitive effects, including eliminating the two firms' vigorous competition against each other for national accounts and diminishing the prospects for innovation in the market.

   - Blue Cross Blue Shield Association: Judge Jackson found that the entities organized under the Blue Cross Blue Shield Association, including Anthem "work together to win national business" and that Anthem's intention to "rebrand" Cigna customers as Blue customers – to ensure that Anthem did not violate restrictive rules imposed by the Blues association – could adversely impact competition. The Court additionally found that the rules of the Blue Cross Blue Shield Association give rise to "an inherent conflict of interest" vis-a-vis the transaction.

   - Efficiencies: The district court rejected Anthem's principal defense: that the anticompetitive effects of the transaction would be outweighed by efficiencies that would benefit consumers. Judge Jackson noted in her opinion that Anthem had "not pointed the Court to a single litigated case in which the merging parties were successful in overcoming the government's case by presenting evidence of efficiencies."

   Judge Jackson did not reach the government's other principal theories against the merger - including that the merger would unlawfully harm competition in 35 local markets and unlawfully harm providers.

2. **Why did Cigna not join Anthem to pursue an appeal of the district court's decision to enjoin the merger?**

   There are a number of reasons that Cigna did not join in Anthem's appeal:

   - Anthem has repeatedly and willfully breached the merger agreement in a manner that: (1) makes it highly unlikely that regulatory approval for the transaction will be obtained and (2) has harmed and will continue to harm Cigna's interest and those of its shareholders.

   - Judge Jackson's decision to block the merger was based on numerous factual determinations – and does not decide certain of the government's arguments – all of which make a swift and successful appeal highly unlikely. It's also worth noting that we are not aware of a recent example where the D.C. Circuit Court of Appeals has overturned an antitrust injunction against a merger.

   - Because Judge Jackson enjoined the merger on the basis of the national account market, we do not believe that a credible remediation plan (i.e., divestiture package that would address the national account market issue) is possible. As Joe Swedish, Anthem's CEO reportedly stated at a Credit Suisse investor conference on November 8, 2016, an adverse ruling as to the national accounts phase of the trial would mean "game over – end of story…"

   In light of the foregoing, Cigna has determined that there is no feasible path to ever completing the merger, let alone by April 30, 2017, and therefore it would be in the best interests of our clients, customers and shareholders to move forward with a sovereign growth strategy.

3. Why is termination in the best interests of Cigna shareholders? Couldn't an extension of the agreement lead to a better outcome?

Anthem has not complied with the merger agreement. As described above, there is no feasible path to ever completing the merger, as a result, extending the merger agreement is not only futile but it also exposes Cigna to additional harm from Anthem's breaches.

4. How did Anthem breach the merger agreement and what are the "additional damages" for which Cigna is suing Anthem?

Cigna entered into the deal in order to create a combined company that would expand choice, improve affordability and quality, and further accelerate value-based care. Not only was this good for the combined entity and the consumer, it was the only viable path to regulatory approval. However, Anthem abandoned this agreed-upon plan and instead pursued a unilateral strategy that heavily favored the Blue Cross Blue Shield Association, members and rules over the transaction and its obligations under the merger agreement. As a result, the path for regulatory approval of the transaction was fatally compromised and Cigna and its shareholders were harmed.

In pursuing this course, Anthem willfully violated a number of provisions in the Merger Agreement, including (but not limited to) its obligation to use its reasonable best efforts to secure regulatory approval for the transaction and its obligation to refrain from misappropriating Cigna's confidential information.

Under the merger agreement, Cigna is entitled to recover damages in excess of the reverse termination fee that the company and its shareholders have suffered as a result of Anthem's willful breaches. The additional damages, exceeding $13 billion, include the lost premium value to Cigna's stockholders caused by Anthem's willful breaches of the merger agreement.

5. Why is a lawsuit necessary to terminate the merger agreement? Why couldn't Cigna and Anthem agree on the next steps without a lawsuit?

There are fundamental disagreements between Cigna and Anthem with respect to the Merger Agreement that require a legal determination.

Anthem has sought to extend the termination date to April 30 – and to do so would require that it is fully compliant with the agreement. As outlined in our complaint, we do not believe that Anthem has complied with the Merger Agreement and, therefore, has no right to extend the merger agreement.

Conversely, Anthem does not believe that Cigna has the right to terminate the Merger Agreement at any time, including on or after April 30. We vigorously disagree with Anthem's position.

We reached out to Anthem to discuss our options and to try to resolve these issues without litigation, but were unsuccessful. As a result, we initiated legal action to: (1) confirm that the merger agreement has been lawfully terminated; (2) collect our break-up fee; and (3) seek additional damages exceeding $13 billion that we believe we are owed as a result of Anthem's numerous breaches under the agreement.

We believe strongly in the merits of our case and hope that this matter is rapidly resolved.

6. Did any of Cigna's actions put any of the break-up fee at risk?

Cigna has maintained full compliance with the merger agreement and has fully cooperated with Anthem throughout the process. While Anthem led the regulatory approval process, Cigna committed its full support – which included work by hundreds of associates and hundreds of millions of dollars in expenditures. Anthem itself has publicly acknowledged on multiple occasions that Cigna has been a helpful and cooperative partner. At a May 2016 investor conference, for example, Anthem's General Counsel, Thomas Zielinski, stated that working with Cigna on the transaction "had been a very collaborative process and maybe more so than other transactions I have been involved with." Mr. Swedish further declared that "the teams are working very, very well together" and that "we have been very collaborative." Mr. Swedish also testified in open court that the parties had "work [ed] very well together," describing the cooperation as "inspirational."

The only contractual basis on which Anthem can seek to avoid paying the reverse termination fee after a termination is if the failure to obtain regulatory approval is caused by Cigna's "Willful Breach."

- Showing "Willful Breach" is a high bar to meet. Anthem can seek to deprive Cigna of the reverse break fee only if it can show that Cigna committed a "material breach" with "actual knowledge" that its actions would constitute a material breach of the Merger Agreement.

- Even if Anthem can meet that high standard, it also needs to show that the breach caused the deal not to be approved.

- Anthem has no grounds for establishing a "Willful Breach" by Cigna. Cigna has satisfied all of its contractual obligations and is entitled to the entirety of the $1.85 reverse termination fee in accordance with the Merger Agreement, as well as the other damages discussed above.

7. Are you subject to any restrictions related to the merger agreement while the litigation is pending?

We are not subject to any restrictions that would materially impede us from achieving our strategic priorities.

Cigna has a clear path forward to create value in the market place and we will continue to lead the healthcare industry in consumer engagement and in providing support to our customers through their diverse life and health stages.

Additionally, due to our focused value creation strategy and well performing businesses, we have amassed a significant amount of capital available for deployment and leverage capacity for future growth, innovation, and customer value creation.

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

Statements in this document regarding the merger agreement and the transactions and litigation related thereto, future growth, business strategy, strategic or operational initiatives, and any other statements about the Company's future expectations, beliefs, goals, plans or prospects constitute forward looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. You may identify forward-looking statements by the use of words

such as "believe," "expect," "plan," "intend," "anticipate," "estimate," "predict," "potential," "may," "should," "will" or other words or expressions of similar meaning, although not all forward-looking statements contain such terms.

There are a number of important factors that could cause actual results or events to differ materially from those indicated by such forward looking statements, including: ongoing litigation with respect to the ruling, including Anthem's appeal of the ruling; litigation with respect to the merger agreement; potential adverse reactions or changes to business or employee relationships, including those resulting from the announcement of the ruling or the result of the ongoing litigation; competitive responses to the ruling or the ongoing litigation; uncertainty as to litigation with respect to the termination of the merger agreement, the reverse termination fee, declaratory judgments with respect to the foregoing and/or contract and non-contract damages for claims filed against Anthem; the risk that a government entity or court of competent jurisdiction, in any litigation, arbitration or other forum, finds in any binding or non-binding decision that Cigna has not complied, in full or in part, with its obligations under the merger agreement or that Cigna is liable for any breach, willful or otherwise, of the merger agreement; uncertainty as to whether and, if so, when Anthem will pay the reverse termination fee; uncertainty as to litigation with respect to any suit initiated by Anthem against Cigna, including for damages with respect to the transactions contemplated in the merger agreement; competitive responses to the ruling; the inability to retain key personnel; our ability to achieve our financial, strategic and operational plans or initiatives; our ability to predict and manage medical costs and price effectively and develop and maintain good relationships with physicians, hospitals and other health care providers; the impact of modifications to our operations and processes, including those in our disability business; our ability to identify potential strategic acquisitions or transactions and realize the expected benefits of such transactions; the substantial level of government regulation over our business and the potential effects of new laws or regulations, or changes in existing laws or regulations; the outcome of litigation, regulatory audits, including the CMS review and sanctions, investigations and actions and/or guaranty fund assessments; uncertainties surrounding participation in government-sponsored programs such as Medicare; the effectiveness and security of our information technology and other business systems; and unfavorable industry, economic or political conditions, including foreign currency movements; any changes in general economic and/or industry specific conditions, as well as more specific risks and uncertainties. Such other risks and uncertainties are discussed in our most recent report on Form 10-K and subsequent reports on Forms 10-Q and 8-K available on the Investor Relations section of www.cigna.com You should not place undue reliance on forward-looking statements, which speak only as of the date they are made, are not guarantees of future performance or results, and are subject to risks, uncertainties and assumptions that are difficult to predict or quantify. Cigna undertakes no obligation to update or revise any forward-looking statement, whether as a result of new information, future events or otherwise, except as may be required by law.