

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ANTHEM, INC.,	:
	:
Plaintiff,	:
	:
v.	: C.A. No.
	: 2017-0114-JTL
CIGNA CORPORATION,	:
	:
Defendant.	:

- - -

Chambers
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Wednesday, February 15, 2017
4:00 p.m.

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BEFORE: HON. J. TRAVIS LASTER, Vice Chancellor

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TELECONFERENCE
PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER
AND THE COURT'S RULING

CHANCERY COURT REPORTERS
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1 APPEARANCES: (via telephone)

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16 for Defendant

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1 THE COURT: Good afternoon, everyone.
2 This is Travis Laster speaking.

3 I'd like to start by asking Delaware
4 counsel for Anthem to speak up and tell me who is on
5 the line and who will be making the presentation this
6 afternoon.

7 MR. COEN: Good afternoon, Your Honor.
8 This is Kevin Coen at Morris Nichols here on behalf of
9 Anthem. With me in my office is Mac Measley, and on
10 the line is Glenn Kurtz and Claudine Columbres from
11 White & Case. Mr. Kurtz will be speaking today on
12 behalf of Anthem.

13 THE COURT: Okay. I have the same
14 request for Delaware counsel for CIGNA.

15 MR. ROSS: Good afternoon, Your Honor.
16 David Ross of Ross, Aronstam & Moritz on behalf of
17 CIGNA. Adam Gold of our office is here with me. Also
18 on the line is Bill Savitt of Wachtell Lipton Rosen &
19 Katz, for whom we filed a pro hac motion a few minutes
20 ago. And with the Court's permission, Mr. Savitt will
21 be speaking on behalf of CIGNA.

22 THE COURT: All right. That's fine.

23 So to let you know what I have done, I
24 have read the entire complaints in both the

1 Anthem-initiated case, which we're technically here
2 on, as well as the CIGNA-initiated case that is its
3 companion.

4 I have looked at but I can't pretend
5 to have read fully by any means the termination
6 provisions in the merger agreement; and I have read
7 memorandum of law in support of the TRO; and I have
8 looked at the proposed form of orders; and most
9 recently, I have read Mr. Ross' letter.

10 So I say that because you all have
11 radically different views of the underlying facts, and
12 I don't think it will behoove any of us to use this
13 time to review your respective positions on the
14 underlying facts or how you reached this phase.

15 What I think would be helpful is if
16 you all focused your minds and your comments on
17 whether a TRO should be granted and then what type of
18 schedule we should have, depending on what happens,
19 with or without a TRO.

20 So with that framing, Mr. Kurtz, I'd
21 ask you to go first.

22 MR. KURTZ: Thank you, Your Honor.
23 Good afternoon.

24 THE COURT: Good afternoon.

1 MR. KURTZ: I will try to avoid
2 talking about too many of the merits which are in
3 dispute. I think we could say that there is one
4 matter that has been agreed to, and that is that the
5 merger is a unique and transformative merger; that it
6 would offer better and lower cost health care to tens
7 of millions of consumers; and it would pay over
8 \$13 billion of deal premium value to CIGNA
9 shareholders. So without intending a pun here, there
10 is a great deal at stake.

11 This case and this motion are brought
12 to preserve that value by maintain the status quo in
13 the deal and, specifically, by enjoining termination
14 and interference with ongoing efforts to clear the
15 merger.

16 I think it's important for the Court
17 to understand that there are at least two pathways to
18 a closing here. One is through appeal and the other
19 is through resolution with a new DOJ. And the motion
20 is intended to preserve those options, primarily.

21 There's reasons that we believe the
22 merger is still able to clear. Notably, now Vice
23 President Pence was supportive of the transaction as
24 the governor of Indiana. The merger would allow

1 Anthem to expand into nine new states under the
2 Affordable Care Act.

3 That seems particularly important now,
4 as Aetna has pulled out of certain states and it's
5 mulling over whether to reduce its presence further.
6 And today, timely enough, Humana announced a decision
7 to pull out of the exchanges altogether. Looking at
8 new rules, this is a way to sort of help with that as
9 well.

10 And then on the appeal front, Anthem
11 promptly filed a motion to expedite. The D.C. Circuit
12 Court set a schedule that had the Government's papers
13 going in today and a reply by Anthem tomorrow at
14 12:00. And we think that's what generated the
15 termination notice, because now the Government has
16 taken enormous advantage of this to oppose the
17 expedition as saying the deal is now dead. And we're
18 looking to get a TRO in place in order to be able to
19 let the D.C. Circuit Court know by tomorrow at noon
20 that the deal has not been terminated.

21 Obviously, the lynchpin of a TRO is
22 ordinarily irreparable harm. We have two forms of
23 irreparable harm here. The termination of a unique
24 and transformative merger is irreparable harm. The

1 courts in Delaware have repeatedly recognized that:
2 True North, Oracle, Hollinger, Revlon. There's no
3 replacement. There is no replacement here.

4 The second irreparable harm here is
5 the damage if not the entire thwarting of an appeal.
6 If there's no merger in place, then we can expect DOJ
7 to move to strike an appeal as no longer available.
8 Then it wouldn't be justiciable if you were litigating
9 a decision that couldn't result in the consummation of
10 a merger. That has been recognized by several courts,
11 that the loss of an appellate right is irreparable
12 harm, harm that can't be compensated for with money
13 damages.

14 And then a third way to get to
15 irreparable harm is that CIGNA agreed that a breach of
16 the merger agreement constitutes irreparable harm.
17 Delaware courts have enforced those provisions. It
18 seems particularly appropriate here, where you have
19 extremely large and sophisticated parties represented
20 by lots of counsel to support that and enforce it.
21 And I'll get to momentarily why we think that we have
22 a clear right to keep the merger alive. So we think
23 this presents a textbook case of irreparable harm.

24 When you have irreparable harm, the

1 colorable claim element of a TRO is a really low
2 threshold, we think. We've seen it described as
3 claims are colorable if the facts that are alleged are
4 true would make them colorable or that they're
5 nonfrivolous. And we think that the verified
6 complaint more than demonstrates colorable claims. We
7 think they're clear.

8 There's fundamentally two claims here
9 at issue. The first one is that Anthem, on
10 January 18th, extended the termination date of the
11 agreement. The original termination date was
12 January 31st. That's Section 7.1(b) of the merger
13 agreement. That's not a drop-dead date. The merger
14 stays in place unless and until it's validly
15 terminated. But the original termination date was
16 January 31st.

17 Section 7.1(b) permitted Anthem to
18 unilaterally extend the termination date through
19 April 30. That's what we did. That's been recognized
20 throughout this case. In fact, at the time that the
21 District court -- and that's the underlying antitrust
22 case -- was considering a schedule, all parties
23 indicated that the merger would stay around through
24 April 30. And in reliance on that, the District Court

1 set the schedule. And then, notably, in the recent
2 opinion in which the Court enjoined the transaction,
3 she said that the merger agreement is in place through
4 April 30.

5 So we think that one is more than
6 colorable. We think that's clear. That maybe even
7 irrefutable. I'll come back in a second to CIGNA's
8 response to that.

9 The second reason that a termination
10 would be invalid is that CIGNA just doesn't have a
11 right to terminate because the termination right, as
12 set forth in 7.1(b), does not permit termination where
13 a party has failed to fully perform its obligations in
14 a manner that proximately causes the merger to not
15 close by the termination date.

16 We set out a whole host of conduct
17 that I won't go over, given the Court's statement on
18 it, about why we think that's a pretty clear breach.
19 I will say only as an overall matter that you have two
20 different stories. You have identified, that's true,
21 I think, that when the time comes to get into the
22 details, you know, we'll be able to demonstrate why
23 our story is the right one.

24 But I think, objectively, looking at

1 what happened and didn't happen, we demonstrated very
2 clearly a breach of best efforts. Best efforts is a
3 daunting standard. It's got a hell or high water
4 obligation with respect to the regulatory clearance
5 matter. That's been described as bracketed only by
6 financial disaster by a leading case, Bloor v.
7 Falstaff, which was also cited in Hexion, in this
8 court, as the standard.

9 And we think that if Your Honor looks
10 at all the conduct that's been pled, you'll see that,
11 objectively, that's a lack of best efforts and that
12 the kinds of things that CIGNA raises are in the
13 nature of excuses. And the best efforts is an
14 objective criteria that doesn't really accommodate
15 excuses or reasons. It demands behavior.

16 The balancing of equities -- actually
17 I'll direct my comments to the balancing of the
18 equities but I'll also note that the merger agreement
19 contains a provision where the parties agree that
20 injunctive relief should be issued to enjoin breaches
21 of the agreement. It also includes specific
22 performance. We obviously haven't sought that today.

23 And, again, we're with sophisticated
24 parties, and we think that we've pretty clearly

1 demonstrated that these are breaches; that a
2 termination is a breach in and of itself, in addition
3 to the best efforts issues.

4 Balancing of the equities we think
5 decisively weighs in favor of a TRO. As I've already
6 addressed, there's enormous irreparable harm to Anthem
7 in losing a unique and transformative merger. The
8 same is true with respect to tens of millions of
9 consumers who will lose out on better and less
10 expensive health care at a time when health care is in
11 a bit of a state of flux if not distress.

12 And then, of course, CIGNA
13 stockholders stand to lose \$13 billion of deal premium
14 that's not easily replicated either.

15 When balancing that against CIGNA, we
16 think it's pretty overwhelming. I don't see any harm
17 to CIGNA. CIGNA is merely basically sitting around,
18 probably, while we try to get this deal through. And
19 it's abiding by the terms of the agreement. And the
20 only thing it loses is its ability to continue its
21 efforts to avoid a merger.

22 And we're going to work diligently.
23 And if we can get the merger cleared through a
24 settlement or through an appeal, then everybody is

1 going to benefit. And if we are unsuccessful in that,
2 then the termination is going to come soon enough.

3 But certainly there's no urgency to
4 anything that's going on in terms of CIGNA being
5 restrained. And I think some of that is even
6 reflected in the submission that CIGNA made a few
7 minutes ago, which we sort of have been able to get
8 through but largely seems to suggest that they would
9 continue to cooperate, going forward, both on an
10 appeal -- and I don't think that actually works
11 because I think they've just undermined, and hopefully
12 not irreparably, our motion to expedite -- but also in
13 terms of taking steps to get to a close.

14 And CIGNA points out that they're not
15 at the point -- it's not imminent that they need to
16 sign certificates of merger or anything like that.
17 And I agree with that. We haven't asked for that.

18 But the reality is if this is a
19 terminated deal, then the cost of entry for us in
20 settlement has been revoked, and, as I mentioned, I
21 think also potentially our appeal. We can't go and
22 negotiate a settlement, with or without divestitures,
23 with new DOJ if DOJ says, Well, you don't have a
24 merger to negotiate around.

1 And as I mentioned, we're a little
2 afraid that there will be a problem perfecting an
3 appeal in the D.C. Circuit if there is an argument
4 that's already been made heavily by DOJ that there's
5 no merger to protect.

6 So there's a lot of damage here. We
7 lose a deal, and we lose an appeal, potentially, on
8 one end; and there's really nothing that we see on the
9 other end. CIGNA has been living around the merger
10 agreement for many, many months. It contracted to
11 live through April 30, just for the asking. And we
12 don't see any harm at all. And, frankly, by the time
13 we get to April 30, we probably have a better record
14 and understanding about where we can go with this.

15 And then the last thing that I'd like
16 to address, Your Honor, is the CIGNA notion that
17 Anthem is in breach of the agreement and, therefore,
18 Anthem is not able to extend the -- and I know there
19 hasn't been a lot of time to focus on the niceties of
20 the language, but 7.1(b), that provides for both
21 pieces of the puzzle. One is the termination right,
22 which is surrounded by the breach language. That's
23 the right that requires a party, before they could
24 exercise termination, to have performed fully the

1 obligations, not have breached them, and not to have
2 proximately caused the problem.

3 The extension, which was designed just
4 to allow the parties to extend in order to get more
5 time if more time was needed with regulators, doesn't
6 replicate that language at all. It just talks about
7 conditions other than regulatory approval that are
8 satisfied or are capable of being satisfied. And, of
9 course, all of this is still capable of being
10 satisfied. We can still get regulatory approval.

11 And even as to the best efforts
12 allegations, if regulatory approval is forthcoming,
13 then there can't really be an argument that we got
14 there but we didn't get there in the best possible way
15 and that, therefore, somehow, there's no need to close
16 the transaction.

17 And the last point on the contract is
18 the condition is set up, it cross-references over to
19 the Article Sixth conditions. And those conditions
20 are satisfied expressly, either by satisfaction of the
21 condition or waiver of it. And, again, it's
22 capable -- the magic language in the contract -- the
23 condition is capable of being satisfied, not only,
24 therefore, through the regulatory approval but also

1 it's capable of being satisfied through waiver.

2 So I'm happy to answer questions, but
3 without getting into any of the factual matters that
4 Your Honor has read and didn't need repeated, that
5 would be my opening remarks.

6 THE COURT: That's helpful.

7 Let me ask you a couple questions
8 before I go to Mr. Savitt.

9 Assuming that I were to give you a TRO
10 today, one would normally think we'd have to come back
11 relatively soon for some type of preliminary
12 injunction. What would be your preference for when
13 that would occur?

14 MR. KURTZ: Well, we are prepared to
15 move on any schedule, light speed or otherwise, as the
16 Court would like to see, or CIGNA would like to see.
17 We're sort of protected with a TRO. It may be that
18 CIGNA would have a bigger interest.

19 If I were going to make a suggestion
20 on my own, it would probably be if we got ourselves to
21 April 30, then we could deal with at a preliminary
22 injunction stage the issue about whether or not CIGNA
23 has any right to terminate in light of the breaches.

24 But we're also prepared to move next

1 week or any other time, if CIGNA wants it or Your
2 Honor wants it.

3 THE COURT: All right. That's
4 probably enough of an answer on that, then.

5 Let me hear from Mr. Savitt.

6 MR. KURTZ: Thank you.

7 MR. SAVITT: Thank you, Your Honor.
8 And thank you for hearing us.

9 We are digesting this morning's
10 filings from our good friends on the other side. I
11 think I can, in summary, respond, however, to the
12 information that's been put before the Court and the
13 parties.

14 The remedy that's been sought, as the
15 Court, of course, knows, is an extraordinary one, not
16 readily granted, notwithstanding my friends'
17 suggestion to the contrary. It requires a showing on
18 the merits. It requires a showing as to harm. And
19 the short answer for why a TRO ought not be entered
20 here is that there has been no showing on the merits
21 and no showing as to harm.

22 As to the merits -- and I will, with
23 fidelity, Your Honor, respect your suggestion that we
24 not litigate the facts. It is for sure that there is

1 a significant disagreement with respect to how the
2 events over the past 18 months plus have unfolded. We
3 register our disagreement with what's been said on the
4 other side of it, and particularly with respect to
5 what's been suggested about the impact for the
6 insurance market, the health insurance markets and
7 health insurance industry and health care industry in
8 the United States as a whole, but will not use the
9 Court's time to litigate that matter except to
10 register our disagreement.

11 The folks on the other side seeking a
12 TRO have to make a showing, and what they have to make
13 a showing of is that they haven't breached the
14 agreement. The allegations in our verified complaint
15 are detailed and extensive and we think will be
16 abundantly supported by massive evidence at trial.

17 I'm not litigating that now, of
18 course, Your Honor, but the question is whether
19 there's been a showing that that hasn't happened. And
20 there has been no showing. Literally nothing. Zero.
21 They haven't even tried to make such a showing, and
22 there is nothing before the Court in the nature of
23 evidence that could support a restraining order.

24 It's not as though Anthem has been

1 taken by surprise with respect to this situation, what
2 with a 55-page brief. It seems rather more that they
3 were waiting for this to happen.

4 You can't do a TRO without a showing
5 on the merits, and there hasn't been one. And by
6 that, to be express, Your Honor, I mean there hasn't
7 been a showing that CIGNA does not have a right to
8 terminate.

9 And it's not as though this is a new
10 issue that cries out for resolution right now or --
11 for the love of Mike, the issue of the parties'
12 dispute was front and center in the litigation in the
13 District of Columbia, and it figured in Judge Berman's
14 decision, which I believe the Court now has.

15 As to the harm, the irreparable harm
16 piece of it, we don't think there's been any showing
17 on that either, Your Honor.

18 Now, some of what my friends said I
19 think confuses the issue whether there would be
20 irreparable harm with respect to an ultimate judgment
21 that the merger was terminated, that is to say whether
22 the remedy of an injunction is an adequate substitute
23 for an award of damages. That is an irreparable harm
24 question, but it's not the precise irreparable harm

1 question we're dealing with now.

2 What we're dealing with now is the
3 irreparable harm question whether, absent a
4 restraining order, the extraordinary device that
5 Anthem proposes, it will suffer irreparable harm. We
6 think there's been no showing there either.

7 We are struggling to define with
8 precision what even is alleged to be the irreparable
9 harm. Reference was made in my friend's presentation
10 to the loss of a valuable transaction, but that's not
11 the irreparable harm here.

12 At the end of trial, if the Court
13 believes that Anthem is correct, then it can order
14 specific performance and the transaction will proceed,
15 assuming that it's able to clear the other conditions
16 necessary for consummation, which we think is
17 exceedingly unlikely, but that's another matter.

18 The irreparable harm that is on issue
19 here, that's on offer here, seems to be the argument
20 that without an order of this Court, Anthem won't be
21 able to proceed with its appeal, and Anthem won't be
22 able to take steps to continue to get regulatory
23 approval.

24 We don't see a showing that that's so.

1 They can prosecute their appeal without us. Anthem
2 indeed took its appeal without CIGNA as a participant
3 in that appeal.

4 What they can tell the District of
5 Columbia Circuit is the truth, which is perfectly
6 clear, not just from today's filings but what has come
7 before, which is the parties dispute whether there has
8 been a breach and whether there are termination
9 rights.

10 They can say that that issue is before
11 Your Honor, and they can tell the D.C. Circuit that
12 the parties to that dispute, to the dispute we are
13 presently on the phone about, agree -- at least we
14 do -- that we should try to ensure that whatever
15 ruling this Court ultimately makes can be given proper
16 effect. A principle that we think is important in the
17 context of evaluating a motion for a TRO which we're
18 happy to say we clearly agree with.

19 To the extent there is an argument
20 regarding whether Vice President Pence thinks that the
21 merger ought to be approved, well, it's not in any
22 papers as far as we can tell.

23 Their arguments regarding new DOJ, the
24 fact is there is no new DOJ. There is only old DOJ.

1 No new DOJ personnel has been appointed or approved.

2 And the idea that we are doing
3 anything on the CIGNA side of things to impair any
4 discussions there is without any basis, as is the
5 suggestion that there is some new DOJ to talk to.

6 I did want to address the question why
7 what's happened happened now because my friend
8 adverted to it with a suggestion -- false -- that it
9 was driven by their motion to expedite. What's
10 happened, Your Honor, is that Anthem has only now,
11 recently, in the past number of days, made clear that
12 it believes CIGNA has no right to terminate the merger
13 agreement, not to January 31st, not on April 30th, as
14 my friend suggested, but ever.

15 Their position is that Anthem is -- is
16 that CIGNA can't terminate the merger agreement
17 because it's breached the merger agreement in ways
18 that precluded regulatory approval. If that's right,
19 then by Anthem's light, CIGNA is on the hook
20 indefinitely.

21 That rendered the dispute presently
22 before the Court utterly inevitable, because it is as
23 certain as the day is long that April 30th will come
24 and go and regulatory approval for this transaction

1 will not be had. I doubt I will even hear my good
2 friend on the other side dispute it.

3 It is Anthem's own words that it's 120
4 days from Court approval until regulatory approval can
5 be had. From today, that takes us into June. And
6 we're not going to start today. We're going to start
7 only after an appeal on whatever calendar is decided
8 by the D.C. Circuit, and in the event of a favorable
9 ruling for the transaction in the D.C. Circuit, a
10 remand for further proceedings in the District Court.
11 There isn't any question that April 30th is not going
12 to see regulatory approval.

13 But what's fundamental now is Anthem's
14 position that CIGNA is precluded from escaping the
15 merger agreement, terminating the merger agreement,
16 even then. This isn't a circumstance where Anthem
17 said, Well, give us until April 30th and we'll see
18 where we are. Anthem has taken precisely the opposite
19 position.

20 And even then, so the Court
21 understands, it's very difficult for CIGNA to continue
22 to perform this contract even if it was otherwise able
23 to. We are being asked to approve of filings in the
24 District of Columbia Circuit Court that we believe are

1 legally misguided and are factually inaccurate.

2 We've navigated this tension as best
3 we could in the District Court but we couldn't
4 continue to be bound by any obligation to cooperate in
5 the Circuit Court, given the increasingly
6 irresponsible litigating positions Anthem has taken,
7 especially when balanced against the literally zero
8 percent chance of success on the regulatory front by
9 April 30th.

10 And in few of all this -- and I'm
11 coming to a point, Your Honor, that we believe is
12 important for purposes of responding to what the folks
13 on the other side have said -- we've concluded that
14 what's happening here is Anthem wants to keep CIGNA on
15 ice. It wants to continue to keep a competitor from
16 competing. It wants to continue exploiting the merger
17 agreement for its own narrow gain. That's what
18 they've done for over a year and a half. We've been
19 tied up for over a year and a half. And they aren't
20 entitled to do it anymore.

21 CIGNA has a right to terminate. It
22 has obligations to stockholders and to customers and
23 the people it serves to move to put a deal behind it
24 that cannot be done when a termination right is ripe,

1 which it is.

2 My friend made reference to -- I think
3 he said that there was no harm because CIGNA would
4 just be basically sitting around while the months ran
5 off the clock and Anthem pursued increasingly hopeless
6 regulatory strategy. But large public companies worth
7 many tens of billions of dollars with obligations to
8 stockholders and constituencies don't basically sit
9 around. There is a strategy to be deployed. There
10 are capital deployments to be made. There are any
11 number of initiatives that each of these companies,
12 CIGNA and Anthem, need to get to if they're going to
13 go about their business.

14 The idea that an ongoing temporary
15 restraining order is cost-free to CIGNA is false, just
16 plain false. There's no showing of it. And handcuffs
17 of the sort that Anthem proposes to continue to bind
18 CIGNA are not justified on the facts, not justified on
19 the contract, and not at all cost-free.

20 Now, it's our position that we've
21 complied with our obligations under the merger
22 agreement, and I think the evidence will show that. I
23 know the Court doesn't want to hear about it and,
24 candidly, I don't want to talk about it now.

1 I do want to say that we are keen on
2 the CIGNA side to continue to conduct ourselves so as
3 to ensure that any relief the Court orders will be
4 capable of being given effect.

5 What we are not trying to do here is
6 to short-circuit the ability of this Court or any
7 other to have its rulings enforced. Candidly, we
8 don't think, ultimately, an order of specific
9 performance can happen here because we don't think
10 there's any way this transaction can ever be approved,
11 given the self-interested way in which Anthem has gone
12 about seeking regulatory approval.

13 But we have no interest in doing
14 anything to impair this Court's remedial authority.
15 If anything, candidly, Your Honor, it's the Anthem
16 side of the equation that is ignoring the merger
17 agreement.

18 As an illustration, both companies
19 have covenants in the merger agreement that restrict
20 their ability to deploy capital for share repurchases.
21 As the Court knows, this is an important issue from a
22 governance and capital management perspective.

23 CIGNA announced to Wall Street in the
24 past number of days that it would undertake

1 repurchases this year only within the tolerance
2 permitted by the merger agreement, attempting to live
3 within the boundaries of the merger agreement so as to
4 ensure the capacity of the Court to order effective
5 relief. That's a company that's trying to remain
6 compliant.

7 Anthem, on the other hand, announced
8 to Wall Street that they'll undertake buybacks this
9 year that will exceed the amount permitted by the
10 merger agreement. That is a company that is not
11 coloring within the lines of the merger agreement.

12 There are all sorts of other matters
13 pertinent to integration that evince Anthem's failure
14 to do its contractual duty, and it just can't be said,
15 Your Honor, that the situation is cost-free or that
16 either party should be put in the position of having
17 to indefinitely comply with the restrictions of the
18 agreement.

19 Finally, I think I heard the other
20 side say that CIGNA has conceded that the contract
21 could be extended to April 30th, and I think that was
22 in their papers as well. That just is not true.

23 Anthem, to be sure, argued before
24 Judge Jackson in the D.C. Circuit that the trial

1 schedule needs to be compressed to hit an April 30th
2 deadline, but among other things, they told the Court
3 that it needed to be finished 120 days before
4 April 30th so they could have time to appeal so they
5 could have time to implement a favorable ruling.

6 So all that does is confirm that
7 April 30th is no longer even remotely in prospect. It
8 doesn't do anything to support the idea that anyone on
9 the CIGNA side made such a concession.

10 Anthem cites in page 3 of its papers a
11 statement from the District Court's opinion enjoining
12 the merger that the parties are bound by their merger
13 agreement through April 30th, but all the Court was
14 citing there was a unilateral filing of Anthem in
15 which Anthem made the point that expedition was
16 necessary.

17 I mean, it's kind of worth noting that
18 Anthem doesn't think that the statement is true
19 because Anthem thinks that CIGNA is bound well beyond
20 April 30th, as it has made perfectly clear.

21 These issues come together, Your
22 Honor, in our response to the temporary restraining
23 order because we submit that what has not been shown
24 is, on the merits, a sufficient likelihood of success

1 to allow the extraordinary remedy ordered, or on the
2 irreparable harm, to justify the extraordinary relief
3 that's been requested.

4 I've said it a couple of times and
5 I'll say it again, and it's in Mr. Ross' letter, we
6 believe that we should get this case tried. We
7 believe we should get it tried promptly. It's
8 complicated, and it's going to be very fact-intensive.
9 We want to make sure the Court has an adequate record,
10 but we are ready to get to work on it. And we're also
11 ready to do that in a way that will ensure the Court's
12 ultimate ability to do substantial justice as it sees
13 fit. And we're happy to cooperate with our friends on
14 the other side of the caption to see to it.

15 Having said all that, the idea that a
16 sufficient record has been submitted to justify a
17 temporary restraining order, we would submit, Your
18 Honor, is inaccurate and ought not be countenanced.

19 So I'll stop there and, of course, be
20 delighted to take any questions that the Court might
21 have.

22 THE COURT: Thank you, Mr. Savitt.

23 Mr. Kurtz, do you have anything you
24 want to reply?

1 MR. KURTZ: Yes. Thank you, Your
2 Honor. I'll be brief, but let me take the big issues
3 on, at least.

4 On the merits, I think I accurately
5 described the standards, which is colorable claim,
6 which is, in fact, a low threshold.

7 I also walked through and we briefed
8 that breach -- and that's the only basis on which
9 CIGNA says that the extension is improper, that there
10 was a breach. I walked through in the brief and we
11 walked through today, Your Honor, that 7.1(b)
12 extensions are not attached to breaches; that,
13 instead, it just has to be a condition that's capable
14 of being satisfied. And my brethren didn't respond to
15 that, but that's a legal issue. Your Honor can look
16 at the words and decide yourself.

17 Also, the notion, factually, that
18 Anthem is in breach is not supported even by the
19 complaint. We have proof by Your Honor in the form of
20 our verified complaint that Anthem, in fact, incurred
21 \$520 million, which may be a record -- I don't know --
22 in trying to get through regulatory clearance.

23 We've walked through -- and I won't
24 repeat the facts -- obviously, just tireless work.

1 And we continue to work. And a lot of times, I think
2 when you're trying to figure out who really did what
3 they were supposed to do, maybe you look at parties'
4 interests, because people tend to act in their own
5 interests. And you can see our interest has been at
6 the outset to merge. We reinitiated it over
7 resistance. And here we are, later in the game, and
8 we're fighting for it. And we're reaching out to DOJ,
9 which is new, by the way. There is a confirmed
10 Attorney General, Sessions. And CIGNA is fighting to
11 terminate it.

12 So I think on the merits, which is a
13 low threshold, I don't know if it had to be an
14 overwhelming likelihood of success on the merits, but
15 I think we have met it.

16 And on that April 30 date, you can
17 look to our brief on pages 30 and 31 and you can get
18 the quotes. It's not just Anthem that was at
19 April 30. It was also CIGNA that stood up and said,
20 We agree. And the Court, of course, established that
21 date as the foundational basis for a trial schedule
22 and reiterated that in the recent decision. So it's
23 only CIGNA that's trying to change the timing rules as
24 they got here.

1 In terms of harm, I'm not sure how it
2 could credibly be argued that the loss of a
3 transformative merger is not irreparable harm. It's
4 textbook irreparable harm.

5 The appeal, which I'm not sure my
6 friend responded to, likewise, the loss of an
7 appellate right is irreparable harm. I think the
8 response was, Oh, it's okay, you can argue your
9 position, but, unfortunately, our position is
10 compromised in the event of a termination.

11 And I'll quote from a DOJ filing
12 today, where DOJ said CIGNA's termination "gut"
13 Anthem's argument for expedited appellate review.
14 "Since CIGNA has already terminated the agreement,
15 expedited review and perhaps any appellate review" --
16 any appellate review -- "would be futile." So I don't
17 really think we can argue about the harm this is
18 discussing.

19 CIGNA says, Well, the harm isn't the
20 loss of the transaction because we're still available,
21 but there is no way to make progress on the
22 transaction if you don't have a merger agreement that
23 purports to still be in place. No one will talk with
24 you. Nobody will -- we can't negotiate divestitures

1 or approvals, and we may not be able to take an
2 appeal.

3 And counsel says, Well, look, this is
4 not painless. There's a cost. I don't dispute
5 there's a cost for all parties. That's the cost that
6 they undertook when they entered into an agreement
7 that, in fact, had an extension date for the asking,
8 unilaterally, through April 30.

9 And that became the cost also when
10 they chose to attack the merger instead of support it,
11 because under the terms of the agreement between these
12 sophisticated commercial parties, that breached it.
13 If you breach, you don't get to terminate. So we're
14 not asking them to do anything outside the agreement.

15 And it is indefinite. We don't
16 dispute it's indefinite. It's indefinite because
17 we're where we are, based on the conduct of CIGNA.

18 But having said that, as I said
19 before, nobody is looking to delay this. We're going
20 to try to get it through, which is going to create
21 enormous benefit for everyone. And if it doesn't get
22 through, we have the same interest as CIGNA has in
23 terminating.

24 And I'll tell you, we had I think it

1 was a \$120 million commitment fee payment due on our
2 extension. Our financing only went through
3 January 31st. That's real dollars spent in support of
4 trying to clear a merger with a real belief that we
5 have an opportunity to do so. Companies don't
6 undertake extended financing commitment fees in the
7 nine figures lightly.

8 And we're certainly not trying to keep
9 CIGNA on ice. I don't know how CIGNA is on ice.
10 Maybe they have an equity repurchase interest that I
11 don't know about. But they're out competing and
12 trying to get more work and operating their businesses
13 and making various flowery and optimistic statements
14 into the marketplace about their abilities to continue
15 on in business.

16 And any ice that is involved in
17 remaining tied to the agreement that the parties
18 signed, it applies both ways. And, obviously, Anthem
19 isn't looking to put itself on ice either, which is
20 why we're moving diligently and tirelessly to get to a
21 result here.

22 The idea -- the conspiracy theory that
23 Anthem spent \$520 million, including a \$120 million
24 commitment fee, just to extend and is pursuing

1 settlement and appeal somehow to harm CIGNA really is
2 a little offensive. It also doesn't make any sense.
3 There is no harm attendant to efforts to continue to
4 clear the merger or to take an appeal. It's a little
5 bit fantasy, and there is no way that it actually
6 could be happening. There's no handcuffs at all.

7 So we think that this is a TRO that
8 doesn't hurt CIGNA, even with respect to the matters
9 that they've identified, because they say they'll come
10 right back. They'll come right back if we win at the
11 trial. But the problem is we'll have lost all the
12 time between now and then, because we have an
13 agreement that by all public accounts has been
14 terminated and not reinstated through our TRO.

15 And so talk about being on ice. The
16 progress of the deal is on ice. And there's no way,
17 then -- when we get to a hearing, if we win, you're
18 starting from scratch, but you've lost your appeal
19 right, potentially. The D.C. Circuit doesn't get to
20 play the game that we start and stop whenever we feel
21 like it because we can put the genie back in the
22 bottle. It's a public termination.

23 And CIGNA's statement that it didn't
24 make that to coincide at all with the motion to

1 expedite is at least a little suspect, given that we
2 only had to get through tomorrow before we could have
3 seen if we got an expedited motion before feeding the
4 DOJ juicy quotes for their opposition.

5 But at the end of the day, all we're
6 trying to do here -- we're not asking to require them
7 to sign over shares or sign stock certificates or
8 provide due diligence, which we'll need at some point
9 in order to divest assets, if a divestiture of assets
10 is required to remediate in order to get a settlement.

11 All we're saying now is the
12 termination is stayed, the invalid piece of paper that
13 got sent across the wire is stayed, and that CIGNA
14 can't interfere with our efforts to get it cleared, at
15 least through April 30th, pending Your Honor's
16 determination of the next step, trial or preliminary
17 injunction, however people want to proceed. Which, as
18 I said, maybe makes sense to do sometime before
19 April 30, by which time Your Honor will have more
20 record.

21 And, obviously, my friend over there
22 says the record indisputably is going to undermine me,
23 so that will help him. I'm not nearly as convinced.
24 I think that we have the ability to make progress, and

1 we'll be in a position to report into that over time.

2 So we believe we're entitled to a TRO,
3 and we would ask for it.

4 THE COURT: All right. Thank you both
5 for your eloquence.

6 MR. SAVITT: Your Honor, I apologize
7 for interrupting. If I may make a couple points. And
8 I will be still briefer than my good friend on the
9 other side.

10 THE COURT: Very quickly.

11 MR. SAVITT: One is to observe -- and
12 this is in Mr. Ross' letter -- but the matter of
13 breach, the short of it is that if there's been a
14 breach of obligation on Anthem's part, its right to
15 extend is terminated. That is a function of the
16 interplay of Section 6.3(b) and Section 7.1(b) of the
17 merger agreement.

18 As to this business about being on
19 ice, we have been, and as long as we're subject to the
20 merger agreement, are trying to comply with that. We
21 doubt Anthem is. It's not a trivial matter in the
22 least.

23 Conspiracy theory. Well, it only
24 takes -- you need two to conspire. So there is no

1 conspiracy theory. It's all Anthem. But what doesn't
2 make a lot of sense is that CIGNA would throw down --
3 would file a complaint and terminate if it didn't need
4 to escape the deal for legitimate purposes, if it
5 didn't need to invoke its rights for legitimate
6 purposes.

7 If it was as simple as waiting for
8 April 30th to come and go, then there's no reason we
9 wouldn't have done that. We couldn't do it because we
10 were being put in an impossible legal and business
11 position by the conduct of Anthem.

12 And as to the relief with respect to
13 not interfering with their efforts, no one is
14 interfering with their efforts. It's not even
15 alleged. The question of whether it's an invalid
16 piece of paper, that's not a fit subject for a TRO or
17 preliminary injunctive, frankly. It's essentially
18 final relief in the case and requires a trial.

19 I apologize, Your Honor, and I
20 appreciate the indulgence.

21 THE COURT: All right. Thank you.

22 I'm going to go ahead and give you all
23 my ruling now. I am granting the TRO. Here's my
24 reasoning.

1 I won't go into the details of the
2 situation that the parties have presented except to
3 say that Anthem and CIGNA are parties to a detailed
4 merger agreement. There has been an injunction issued
5 by the District Court of the District of Columbia
6 blocking the merger.

7 Anthem desires avidly to appeal that
8 injunction. It has argued, and I think it has the
9 better reading of the merger agreement on this point,
10 that CIGNA is required to support it in its appeal.

11 Notwithstanding that fact, CIGNA has
12 issued a termination notice purporting to terminate
13 the agreement and has filed a lawsuit seeking to
14 establish that it complied with its obligations and
15 that Anthem, in fact, breached its obligations under
16 the agreement.

17 We are technically here on Anthem's
18 countersuit which seeks, in the first instance, to
19 hold CIGNA to its agreement and, in the second
20 instance, should that not be possible, to recover
21 damages.

22 The relief that is sought today is a
23 temporary restraining order that would preserve the
24 status quo so that this case can be litigated and this

1 Court can indeed grant final relief, if appropriate,
2 enforcing the merger agreement through a decree of
3 specific performance.

4 It is also a TRO that is designed to
5 preserve the status quo pending April 30, 2017, which
6 is the drop-dead date for the merger agreement,
7 assuming that neither party establishes a breach that
8 would prevent the other party from terminating as of
9 April 30th.

10 A status quo order that would keep the
11 merger agreement in place pending that date is
12 critically important because, otherwise, without that
13 type of temporary restraining order, CIGNA can claim,
14 as it has, to have terminated the merger agreement.

15 That obviously has real-world
16 consequences, notwithstanding the suggestion by
17 CIGNA's counsel to the contrary. One of those
18 real-world consequences is that if the merger
19 agreement is terminated, then the injunction issued by
20 the District Court is arguably moot. That, in turn,
21 would prevent the Court of Appeals for the District of
22 Columbia from reviewing that injunction.

23 I can tell you, as a trial judge, that
24 while it seems highly likely, having read the District

1 Court's opinion, that the government has the strong
2 hand going into that appeal, I have been reversed on
3 many occasions where I had thought I had gotten it
4 right, and so it is certainly possible that the Court
5 of Appeals could reverse that decision and result in
6 the elimination of an impediment to the closing.

7 It's also possible that with the
8 merger agreement still in place, impediments to the
9 closing could be addressed through other ways.

10 Mr. Kurtz has cited several of them.

11 This brings us to the analysis of the
12 TRO application. It requires, in the first instance,
13 a colorable claim. It requires, in the second
14 instance, a showing of irreparable harm. And then the
15 Court, as it always must, has to take into account the
16 balancing of the hardships.

17 CIGNA's counsel starts from the
18 proposition that this is an extraordinary remedy. It
19 is an extraordinary remedy but in the sense of a
20 non-ordinary remedy. It is an out-of-the-ordinary
21 remedy. It is not an extraordinary remedy in the
22 sense of "The League of Extraordinary Gentlemen" or
23 extraordinary superpowers or things that a Court just
24 never does.

1 It is out of the ordinary in the sense
2 that cases normally do not proceed at an expedited
3 pace and normally do not involve preliminary
4 injunctive relief, whether as a temporary restraining
5 order or otherwise, to preserve the status quo. We
6 normally proceed in a nonexpedited fashion to a trial.
7 So in that sense and only that sense is preliminary
8 injunctive relief extraordinary.

9 But preliminary injunctive relief
10 including a TRO is quite common, particularly in this
11 Court, which deals with a lot of similar and, using
12 the word in the same sense, extraordinary situations
13 where it is necessary to preserve the status quo so
14 that effective legal relief can be granted.

15 This is an extraordinary transaction.
16 And I say that not in the sense of whether I believe
17 it's a great deal, as Mr. Kurtz cleverly put it, but
18 in the sense that it is an out-of-the-ordinary
19 transaction. It is quite large. It involves two
20 major companies. It is quite detailed. It is the
21 type of thing that, while it is in place, creates a
22 very different state of play than if it is purportedly
23 terminated.

24 Preliminary injunctive relief of the

1 TRO variety or the preliminary injunction variety also
2 becomes less extraordinary where, as here, the parties
3 have agreed to its availability by stipulating in the
4 merger agreement that irreparable harm will arise from
5 breach.

6 If parties don't want that, don't put
7 it in your merger agreement. If you want to be able
8 to come in later and say that there's no irreparable
9 harm, don't agree in your merger agreement that there
10 is irreparable harm. It's credibility impairing to
11 say that there's no irreparable harm when there is a
12 provision in the agreement where you stipulated that
13 there is irreparable harm.

14 So in terms of the TRO standard, the
15 first question is whether a colorable claim has been
16 asserted. As I see it, the first aspect of the
17 colorable claim is whether the merger agreement
18 remains in existence as of now but for the termination
19 because of the extension of the drop-dead date through
20 April 30, 2017.

21 In my view, Anthem's arguments on that
22 are not only colorable but are, at least on a
23 preliminary basis, more persuasive.

24 The termination date provision gives

1 Anthem the right to extend to April 30th not only if
2 the conditions to closing are satisfied as of that
3 date but if they are capable of being satisfied.

4 What CIGNA would like to say is that
5 Anthem had already breached as of the time when the
6 time for extension came and therefore could not
7 exercise its extension right. There are several
8 problems with that argument.

9 The first is that CIGNA's claims of
10 breach themselves have to be proven. It is not
11 established. And Anthem has countered that, in fact,
12 it did not breach and that it did what it was supposed
13 to do under the merger agreement. That is contested.

14 The second is that it is colorable for
15 purposes of today that Anthem could establish that if
16 it had failed to or was not then able to satisfy one
17 of the conditions, that it was capable of satisfying
18 the conditions by April 30, 2017. It's not clear to
19 me that because of that language, an actual breach
20 would prevent you from exercising your extension right
21 to April 30 if that breach, to the extent it existed,
22 was curable.

23 There's a third reason why I think
24 Anthem has the better of the argument on the

1 extension, and that's the dialogue with the District
2 Court in the District of Columbia about the timing of
3 the merger agreement and how long it would be in
4 place. Nowhere in that dialogue is there any
5 indication of CIGNA taking the position that it's
6 taking now about the extension right not being able to
7 be exercised. To the contrary, CIGNA appeared to be
8 on all fours with Anthem and with the District Court
9 in believing that the drop-dead date had been extended
10 and was then April 30, 2017.

11 What that means, then, is that this
12 agreement, but for CIGNA's purported termination,
13 remains in place. And CIGNA's purported termination
14 is a change in the status quo that has consequences
15 for Anthem.

16 As I see it, Anthem has more than
17 cleared the low hurdle for a colorable claim in terms
18 of the agreement remaining in effect. It remains in
19 effect subject to the District Court's order enjoining
20 the parties from proceeding, but that is the current
21 state of play, a binding merger agreement that the
22 parties are not allowed to proceed with because of the
23 District Court's order. That is a very different
24 state of play from what CIGNA would like to achieve,

1 which is a terminated merger agreement that moots the
2 District Court's order and the prospect of any appeal.

3 The second claim that I think is in
4 play in this case is whether, because of the
5 allegations of breach, the merger agreement can remain
6 in place after April 30, 2017. That possibility
7 arises because if a party has breached, then a party
8 cannot exercise its termination right.

9 I don't think I have to express any
10 view on that today because the question for me today
11 is whether I preserve the status quo through a TRO
12 pending a preliminary injunction hearing later, when
13 we can determine whether the status quo should be
14 continued.

15 I think in connection with the later
16 preliminary injunction hearing, we will have to deal
17 with the arguments about which sides breached -- maybe
18 both sides breached -- and what the consequences of
19 that are for an April 30th termination. But I think
20 for purposes of today, the fact that the merger
21 agreement would be in place but for CIGNA's attempt to
22 terminate is enough to establish a colorable claim.

23 I then get to the issue of irreparable
24 harm. And this is the one where I find that CIGNA's

1 eloquent arguments are somewhat astounding.

2 Clearly, the loss of a major
3 transaction is irreparable harm. If Anthem is in a
4 position to close this deal or otherwise hold CIGNA to
5 the merger agreement, it is in a very different
6 position than if the agreement is terminated. Those
7 two states of the universe are literally universes
8 apart. They're fundamentally different.

9 Second, in terms of irreparable harm,
10 not only is the deal potentially lost, but the
11 opportunity to pursue things in the interim, such as
12 the appeal, such as potential alternatives to
13 regulatory approval, are also lost.

14 CIGNA's counsel took the strong
15 position that he thought it was certain as the day is
16 long that it would be impossible for Anthem to achieve
17 regulatory approval. This is a year in which we've
18 seen the Cavaliers come back from a 3-1 deficit for
19 the first time in NBA history. This is a year where
20 we've seen the Cubs come back from a 3-1 deficit to
21 win their first World Series in over a century. This
22 is a year where we've seen the Patriots come back from
23 a 28-3 deficit to win the Super Bowl for the first
24 time in overtime. This is a year where the new

1 Administration that Mr. Kurtz wants to deal with was
2 not predicted by virtually any political pundit to be
3 the Administration that Mr. Kurtz would be dealing
4 with. I don't think that, given that, this is the
5 year in which someone can reasonably posit and be
6 certain as the day is long that there is no chance for
7 this merger to get approved.

8 Yeah, there might be no chance for it
9 to get approved in a traditional fashion, but there
10 are untraditional things that are available, and
11 Mr. Kurtz has identified some routes short of a
12 full-blown appeal followed by state-by-state approval
13 that he thinks theoretically could get him there.

14 At least for purposes of today, I am
15 not going to deny relief and allow the status quo to
16 be fundamentally changed based on overconfidence about
17 what is certain not to happen.

18 We, finally, get to the balancing of
19 the hardships on this issue. I think it's
20 foreshadowed by my analysis of the irreparable harm.
21 If no TRO issues, then CIGNA gets to claim that the
22 merger agreement is terminated, and any ability to go
23 forward with the transaction is lost.

24 By contrast, if the status quo is

1 maintained, then that is all that happens. The status
2 quo is maintained. The agreement remains in place.
3 The parties continue to comply with it. They're still
4 in a situation where they have a binding merger
5 agreement that they have been enjoined from proceeding
6 with. Anthem can pursue its appeal. And CIGNA simply
7 has to live by the agreements that it voluntarily
8 undertook when it signed up the transaction.

9 So for all these reasons, I'm granting
10 the TRO.

11 I think what you all need to target is
12 a preliminary injunction hearing during the week of
13 April 10th. At that preliminary injunction hearing, I
14 would be inclined to consider not only the question of
15 whether Anthem validly extended in January, which is
16 what I've given you a preliminary and tentative view
17 on today, but also the question of whether there was a
18 sufficient basis to believe that a breach occurred and
19 that the breach was by CIGNA such that the merger
20 agreement would need to stay in place beyond
21 April 30th.

22 And then we can go from there as to
23 what proceedings we need from that point on in terms
24 of a trial for specific performance or damages or

1 whatever has to happen.

2 Now, let me give you a couple caveats.
3 Nothing I say today presages how I view the case as a
4 whole. I've obviously ruled in favor of Anthem. I've
5 obviously expressed some skepticism about some of the
6 arguments that CIGNA has advanced, particularly on the
7 absence of irreparable harm, when we're talking about
8 an agreement governing a front-page *Wall Street*
9 *Journal* headline deal that contains an irreparable
10 harm provision.

11 Yeah, I'm skeptical that there's no
12 irreparable harm from the loss of that, and I'm
13 surprised that that argument was made, but that
14 doesn't translate into the idea that Anthem wins the
15 case. It means that for purposes of today, they have
16 cleared the relatively lenient standard for a TRO,
17 which requires only a colorable claim and a threat of
18 irreparable harm and the balancing of hardships, to
19 maintain the status quo pending further proceedings.

20 Certainly, once there is a more
21 developed record in terms of a preliminary injunction,
22 things could be different. And when we ultimately get
23 to the merits in terms of deciding what actually has
24 happened, things could be very different.

1 I also will say that in terms of the
2 form of temporary restraining order that I'm granting,
3 I am striking the words that appear in the single
4 sentence from "or" to the end.

5 So, in other words, I am enjoining
6 CIGNA from terminating the merger agreement. I am not
7 going further than that. Because once I have enjoined
8 CIGNA from terminating the merger agreement, CIGNA is
9 bound by the provisions under the merger agreement.
10 So is Anthem.

11 But for purposes of any additional
12 restriction on taking any action to prevent or impede
13 regulatory approval on consummation of the merger, the
14 actions that CIGNA is expected to take, is obligated
15 to take, and the things it's obligated not to do, are
16 set forth in the merger agreement. By keeping the
17 merger agreement in place, those restrictions stay in
18 place.

19 I'm not going to substitute for what
20 sophisticated parties agreed to. I'm not going to
21 replace that with whatever this is, a dozen words.
22 You all are going to have to stick with what your
23 sophisticated deal lawyers worked out for you in terms
24 of the obligations relating to transactional approval

1 and regulatory approval.

2 All right. I've talked almost as long
3 as you all did, for which I apologize.

4 Mr. Kurtz, you were the movant. What
5 questions do you have?

6 MR. KURTZ: I have no questions, Your
7 Honor. And we appreciate your immediate attention.

8 THE COURT: All right.

9 Mr. Savitt, what questions do you
10 have?

11 MR. SAVITT: No questions, Your Honor.
12 Thank you.

13 THE COURT: All right. I will sign
14 the order in the form that I've suggested, and you all
15 can go from there in terms of pursuing what other
16 issues you want to pursue.

17 Thank you, everyone.

18 (Conference adjourned at 5:08 p.m.)

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CERTIFICATE

1
2
3 I, JEANNE CAHILL, RDR, CRR, Official
4 Court Reporter for the Court of Chancery of the State
5 of Delaware, do hereby certify that the foregoing
6 pages numbered 3 through 51 contain a true and correct
7 transcription of the proceedings as stenographically
8 reported by me at the hearing in the above cause
9 before the Vice Chancellor of the State of Delaware,
10 on the date therein indicated.

11 IN WITNESS WHEREOF I have hereunto set
12 my hand at Wilmington, Delaware, this 15th day of
13 February, 2017.

14
15
16 /s/ Jeanne Cahill

17 Jeanne Cahill, RDR, CRR
18 Official Chancery Court Reporter
19 Registered Diplomat Reporter
20 Certified Realtime Reporter
21
22
23
24