



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ANTHEM, INC.)	
)	
Plaintiff,)	
)	
v.)	Case No. 2017-0114-JTL
)	
CIGNA CORPORATION,)	
)	PUBLIC VERSION
Defendant.)	E-Filed February 17, 2017
)	

VERIFIED COMPLAINT

Plaintiff Anthem, Inc. (“Anthem”), by and through its undersigned attorneys, for its Complaint against Defendant Cigna Corporation (“Cigna”), alleges as follows:

NATURE OF THE ACTION

1. On July 23, 2015, Anthem and Cigna entered into an Agreement and Plan of Merger (the “Agreement” and the “Merger Agreement”)¹ to create a combined company that would transform health care for consumers by enhancing health care access, quality and affordability (the “Merger”). At the time of signing the Agreement, Anthem agreed to pay consideration of over \$54 billion, thereby providing Cigna’s shareholders with a premium of 38.4%, or \$13.4 billion, to the unaffected stock price as of May 28, 2015. Approximately 99% of the votes cast

¹ A true and correct copy of the Merger Agreement is attached as Exhibit A. Unless defined herein, all capitalized terms in this Verified Complaint have the meanings ascribed to them in the Merger Agreement.

by Cigna shareholders were voted in favor of the Merger. This action is brought (i) to prevent Cigna from wrongfully terminating the Merger Agreement, thereby destroying the enormous value of the transformative Merger to Anthem and consumers, and eliminating approximately \$13 billion in deal premium to Cigna's shareholders, and (ii) for damages.

A. Anthem Has Extended The Termination Date

2. Under the Merger Agreement, the initial Termination Date (defined below) was January 31, 2017. Given the time it could take to obtain regulatory approval or judicial clearance, the Merger Agreement provided each party a right unilaterally to extend the Termination Date through April 30, 2017 if all conditions to Closing had been satisfied, or were capable of being satisfied at Closing, other than the required regulatory and judicial approvals. On January 18, 2017, those conditions were met, and Anthem delivered to Cigna a written notice extending the Termination Date through April 30, 2017.

B. Cigna's Purported Termination Is Invalid

3. On July 21, 2016, the United States Department of Justice (the "DOJ") sued to block the Merger (the "DOJ Lawsuit") in the United States District Court for the District of Columbia (the "District Court"). On February 8, 2017, the District Court issued an order enjoining the Merger. The Merger Agreement requires the Parties to appeal an adverse order, and Anthem immediately filed its

notice of appeal on February 9, 2017 and a motion to expedite the appeal to the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) on February 13, 2017. Although the Merger Agreement requires Cigna to appeal, Cigna instead sent a notice on February 14, 2017 wrongfully purporting to terminate the Merger Agreement, timed to prejudice Anthem’s motion to expedite the appeal.

4. Cigna’s termination is invalid because Anthem extended the Termination Date through April 30, 2017. Notably, Cigna had previously acknowledged that the Merger Agreement could, and would, be extended through April 30, 2017 when the trial schedule was set for the DOJ Lawsuit challenging the Merger. Indeed, the District Court set the trial schedule based on an April 30 Termination Date, and then stated in its recent decision that the Parties “are bound by their merger agreement through April 30, 2017.”

5. In addition to the fact that Anthem extended the Termination Date through April 30, 2017, Cigna has no right to terminate. The Merger Agreement provides that no Party may terminate if it “has failed to perform fully its obligations under the Agreement in any manner that shall have proximately caused or resulted in the failure of the Merger to have been consummated by the Termination Date.” (Ex. A at § 7.1(b)) Cigna has repeatedly breached the Merger Agreement, and such breaches proximately caused or resulted in the failure of the

Merger to be consummated by January 31, 2017.

C. Cigna Sabotaged The Merger

1. Cigna's Senior Management Sought To Avoid The Merger From The Outset

6. Notwithstanding the enormous benefit to its shareholders, Cigna's board and senior management were not willing to support a merger unless they could maintain their employment positions. Rather than working to unlock shareholder value, Cigna's Chief Executive Officer, David Cordani, and Cigna's Board of Directors tied their support of a merger to their own entrenchment. They refused to negotiate unless, among other demands, Mr. Cordani was appointed as CEO of the combined company and Cigna was given an equal number of seats on the board of the combined company. When Anthem rejected Cigna's governance demands, Mr. Cordani demanded that he be guaranteed the position of Chief Executive Officer within two years. And even when Anthem raised its offer price to the amount sought by Cigna, Cigna's board and senior management refused to engage, focusing on their own employment positions, rather than shareholder value.

7. Cigna's senior management maintained their refusal to engage until Anthem bypassed them by publicly announcing the terms of its offer, causing significant pressure from Cigna's shareholders. Even then, Cigna's senior

management agreed to the Merger only after negotiating senior positions and board seats for themselves at the surviving Anthem. Mr. Cordani and Cigna's Board of Directors negotiated (i) for Mr. Cordani to be the President and Chief Operating Officer, and (ii) for five board seats for Cigna directors. Anthem agreed to a \$1.85 billion reverse break-up fee under certain circumstances which, unfortunately, came to serve as further incentive for Cigna to avoid the Merger.

8. Cigna's senior management's efforts to avoid the Merger escalated in January 2016 when Mr. Cordani met with Anthem's CEO, Joseph Swedish. Mr. Swedish stated that Mr. Cordani's responsibilities as President and COO should focus on the Commercial line of business, the biggest segment of the combined company with a P&L to manage of well over \$50 billion. Furious that he was not being provided all of the powers that he desired, Mr. Cordani walked out of the meeting and never again would meet with Mr. Swedish one-on-one. Cigna's Board of Directors then complained about Mr. Cordani's role as "not consistent with our Agreement and not acceptable to our board of directors" and that it "must be addressed" to obtain "a successful and mutually-beneficial partnership." Cigna's board and senior management reverted to their previous self-interested position that the "governance structure" they wanted "was and remains a key component of the strategic rationale for the deal."

9. Notwithstanding the fact that Mr. Cordani was going to have responsibility over the largest segment of the combined company's business, in order to resolve Mr. Cordani's dissatisfaction and try to keep the Merger on course, Anthem agreed to the broader responsibilities he wanted. Mr. Cordani, nonetheless, disengaged from the Merger process and embarked on an unprecedented campaign to sabotage the Merger and procure a \$1.85 billion reverse break-up fee because Mr. Cordani wanted to remain in charge of Cigna and to take the break fee to grow a company he runs.

2. Cigna Has Repeatedly Breached The Merger Agreement

10. The Merger Agreement includes a very rigorous reasonable best efforts covenant which includes a "hell or high water" requirement that the Parties "tak[e] any and all actions necessary" to avoid antitrust impediments. (Ex. A at § 5.3(b)) Senior management and board members at Cigna, instead, dedicated their efforts to sabotaging the Merger in order to preserve their employment positions and capture the \$1.85 billion reverse termination fee. Remarkably, Cigna worked to create a false record that it was committed to the Merger and that it was Anthem that failed to use reasonable best efforts to obtain antitrust clearance and close the Merger, but the record here is clear. Anthem initiated the Merger, defended it, and is now suing to maintain it. Cigna, on the other hand, resisted the Merger from the

outset, did not defend it (indeed attacked it), and is now trying wrongfully to terminate it.

11. Anthem's interest in consummating the Merger, and Cigna's senior management's interest in avoiding it, are also demonstrated by Anthem's intense efforts to obtain regulatory clearance, where Anthem incurred over \$520 million in advisor, attorney, consultant and bank commitment fees to clear the Merger, and Cigna's matching efforts to sabotage that goal:

- (i) Anthem prepared, finalized and submitted to the DOJ Antitrust Division 22 substantive white papers in support of the Merger (after January 2016, Cigna refused to provide any meaningful assistance);
- (ii) Anthem obtained written statements of support and declarations from its customers supporting the Merger (Cigna barred Anthem from seeking support from Cigna-only customers);
- (iii) Anthem tirelessly pursued integration efforts to identify synergies and efficiencies, a key defense to the DOJ action (Cigna's senior management blocked work on integration);
- (iv) Anthem pursued settlement with the DOJ during the DOJ Investigation (defined below) and identified viable buyers to divest assets to address concerns raised by the DOJ (Cigna foreclosed any settlement opportunity by refusing to sign customary non-disclosure agreements with buyers or provide them with necessary due diligence);
- (v) Anthem released a public statement in response to the DOJ Lawsuit that Anthem is fully committed to defending the Merger (Cigna refused to join Anthem's press release and instead issued a separate press release questioning whether the Merger could close at all);
- (vi) Anthem actively pursued settlement opportunities with the DOJ during the DOJ Lawsuit (Cigna's senior management refused to assist or agree to Anthem's efforts to pursue settlement with the DOJ);

- (vii) Anthem submitted 10 expert reports in the DOJ Lawsuit (Cigna did not even comment on any expert reports);
- (viii) Anthem took and defended over 100 depositions (Cigna posed no questions to nearly all of the witnesses, and asked limited, and unhelpful, questions to 3 witnesses to undermine Anthem's defense of the Merger);
- (ix) Anthem took the lead for 20 days of trial efforts (Cigna failed to cross-examine a single witness supporting the DOJ and, instead, engaged in the truly extraordinary act of cross-examining Anthem's witnesses supporting the Merger, and had its CEO provide certain testimony that supported the DOJ's positions);
- (x) Anthem drafted and finalized over 300 pages of trial briefing in support of the Merger (Cigna refused to comment or sign Anthem's pre-trial brief, proposed findings of fact or conclusions of law or otherwise submit any of their own in support of the Merger); and
- (xi) Anthem made comprehensive opening statements and closing arguments in support of the Merger (Cigna made closing comments to undermine the Merger).

12. As the Wall Street Journal reported, “[d]uring trial proceedings that began in November, *Anthem mounted a legal defense of the merger single-handedly. Cigna lawyers said very little during the proceedings, and when they did, it usually didn't help Anthem's position.*” Anna Wilde Mathews & Brent Kendall, *Anthem to Appeal Decision Against Cigna Deal: Discord Between the Two Health Insurers Makes Future of Merger Uncertain*, Wall St. J., Feb. 9, 2017. Other media outlets accurately predicted that “*Cigna's antics might . . . be the merger's undoing*” and reported that Cigna's “*lack of enthusiasm about its \$54 billion Merger with rival Anthem Inc. has given the U.S. Department of Justice a*

leg up in an ongoing trial in D.C. federal court,” that merging partners are normally expected to be “cheerleaders for each other,” but Cigna’s behavior was “*extremely unusual*” and “[t]o put it in certain vernacular, if I were Anthem, I would be pissed out of my mind.” Jimmy Hoover, *Anthem, Cigna Discord Could Give DOJ Edge In Merger Trial*, Law360, Dec. 21, 2016.

13. Cigna’s efforts to avoid the Merger were successful. On February 8, 2017, the District Court issued a memorandum opinion (the “Opinion,” or “Op.”)² enjoining the Merger citing as “*the elephant in the courtroom*” the fact that rather than supporting the Merger, as required, Cigna was fighting it. (Op. at 9 (emphasis added)) The District Court found that the DOJ “is not the only party raising questions about Anthem’s characterization of the outcome of the merger: *one of the two merging parties [Cigna] is also actively warning against it.*” (*Id.* (emphasis added)) [REDACTED]

[REDACTED] (*Id.* at 9, 119 (emphasis added)) As the national media reported, “*Cigna sabotaged its own merger*” and a “*big part of the decision to block the case*” was the fact that “*Cigna was actively fighting the merger.*” Bob Bryan, “*The Elephant in the Courtroom*”: A Federal Judge Says Cigna Sabotaged Its Own Merger That

² The Opinion is attached hereto as Exhibit B.

Would've Created Largest U.S. Health Insurer, Business Insider, Feb. 9, 2017 (emphasis added).

14. Notwithstanding Cigna's efforts to avoid the Merger, Anthem believes that the District Court's ruling is erroneous. Additionally, Anthem believes that there is a path forward involving outreach and potential settlement with the DOJ under the new Administration because (i) there is a new Attorney General and there soon will be a new Assistant Attorney General with responsibility for overseeing the Antitrust Division, and (ii) a combined Anthem-Cigna in all 50 states will benefit consumers and employers in the form of lower medical costs and improved product offerings at a time when the future of the Affordable Care Act is undetermined. So, there are still very meaningful opportunities to consummate the Merger and deliver enormous value to Anthem, Cigna, their respective shareholders, consumers and employers.

D. Anthem Cannot Consummate The Merger Without Cigna's Assistance

15. Anthem, however, cannot consummate the Merger without Cigna's compliance with its obligations under the Merger Agreement because Anthem cannot obtain regulatory approvals or settle with the DOJ without Cigna's assistance. Cigna is the only party able to provide certain necessary information to obtain such approvals or facilitate a settlement with the DOJ. Additionally,

Cigna's wrongful termination will adversely impact Anthem's appeal. Consequently, if Cigna is not enjoined from terminating the Merger Agreement and required to perform its obligations thereunder going forward, then the Merger will fail.

PARTIES

16. Plaintiff Anthem, Inc. is one of the nation's leading health benefits companies with more than 39.9 million members enrolled in its family of health plans. It is an Indiana corporation with its principal place of business at 120 Monument Circle, Indianapolis, Indiana, 46204.

17. Defendant Cigna Corporation is a health benefits company serving approximately 15.2 million members. It is a Delaware corporation with its principal place of business at 900 Cottage Grove Road, Bloomfield, Connecticut, 06002.

JURISDICTION AND VENUE

18. This Court has jurisdiction over the subject matter of this action pursuant to (i) Del. Code Ann. tit. 6 § 2708(b), which grants the courts of Delaware jurisdiction over actions on contracts, such as the Merger Agreement, in which the parties have specified that Delaware law governs (*see* Ex. A at § 8.6(a)); (ii) Del. Code Ann. tit. 8 § 111(a)(6), which grants the Court of Chancery jurisdiction over “[a]ny civil action to interpret, apply, enforce or determine the validity of the

provisions of . . . [a]ny agreement . . . of merger” governed by the merger provisions of the DGCL, as is the Merger Agreement; and (iii) 10 Del. C. § 341, which gives the Court of Chancery jurisdiction “to hear and determine all matters and causes in equity.”

19. Personal jurisdiction is proper in this Court because (i) Defendant Cigna is a Delaware corporation, and (ii) Anthem and Cigna agreed in Section 8.11 of the Merger Agreement that the courts of Delaware shall have exclusive jurisdiction over any dispute with respect to the Merger Agreement.

20. Venue is proper in the Court of Chancery because Cigna is incorporated here, and Anthem and Cigna agreed to submit to the exclusive jurisdiction of this Court for any action “with respect to this Agreement.” (*See Ex. A at § 8.11*)

FACTUAL ALLEGATIONS

A. The Benefits Of The Transformative Merger

21. A combination of Anthem and Cigna would be transformative in the healthcare industry. Each of the Parties has unique and complementary strengths, and the combination of the two offers a comprehensive range of health benefits products to a full range of consumers, including individuals, employers, and state and federal governments.

1. The Benefits Of The Merger To Anthem

22. Through the Merger, Anthem would gain diversification and growth covering approximately 55 million medical members with well positioned commercial, government, consumer, and specialty businesses, and a market-leading international franchise, whereas Anthem currently only operates as an independent licensee of the Blue Cross and Blue Shield Association (“BCBSA”) in fourteen states and serves specialty plan members in other states. Anthem already focuses intently on meeting client needs through innovation, but merging with Cigna would enhance Anthem’s ability to bring even more innovative solutions to clients by adding scale and Cigna’s well-regarded products to its portfolio. Indeed, the Merger will create a unique company with unique products that combines the best aspects of Anthem’s and Cigna’s programs to their customers in the form of new, improved products that combine Anthem’s discount advantage with Cigna’s customer-facing product components that Cigna customers tend to find most attractive. Thus, the complementary nature of the two companies would allow Anthem to leverage the deep global health care knowledge, local market talent, and expertise of both organizations to ensure that consumers have access to affordable and personalized solutions across diverse life and health stages.

2. The Benefits Of The Merger To Cigna's Shareholders

23. Under the Merger Agreement, the total consideration to be received by Cigna's shareholders is approximately \$54.2 billion, a 38.4% premium to Cigna's unaffected stock price on May 28, 2015. Termination of the Merger Agreement would eliminate approximately \$13 billion³ of value to Cigna shareholders. Moreover, approximately 45% of the consideration to Cigna shareholders is common stock of Anthem, so Cigna shareholders also would lose the ability to participate in the upside of the combined company.

3. The Benefits Of The Merger To Consumers

24. The Merger would also benefit the public by creating efficiencies that will generate \$2.4 billion in medical cost savings, the vast majority of which ultimately would be passed through to consumers. Anthem expects to be able to extend to Cigna customers the lower prices that Anthem's customers receive from hospitals and doctors.

25. The Merger also would provide healthcare access to a significant number of uninsured individuals by expanding the merged company into new Affordable Care Act exchanges in nine states, where neither Anthem nor Cigna currently offers individual coverages on-exchange. The combined company also

³ The precise amount varies based on Cigna's stock price at a given time.

would offer the prospect of expanded provider collaboration, enhanced affordability and cost of care management capabilities, and superior innovations.

B. Despite The Obvious Benefits To Their Shareholders And Customers, Cigna's Board And Senior Management Were Opposed To The Merger From The Outset

26. On June 3, 2015, Anthem delivered to Cigna a merger proposal reflecting a purchase price of \$174 per share. Anthem also proposed that: (i) Mr. Swedish serve as chief executive officer, (ii) Mr. Cordani serve as president and chief operating officer of the combined company, and (iii) the combined company have fourteen directors, eight designated by Anthem and six by Cigna.

27. On June 7, 2015, Cigna made a counter-proposal that (i) Anthem raise its offer per share to the mid-\$180s, (ii) Anthem guarantee that Cigna's Chief Executive Officer, David Cordani, be installed as CEO of the combined company and co-chairman of the integration team with Mr. Swedish, and (iii) Cigna directors be allocated an equal number of seats as Anthem directors on the board of the combined company.

28. On June 10, 2015, Anthem revised its offer to \$178 per share and agreed to appoint Mr. Cordani as co-chairman of the integration team with Mr. Swedish, but otherwise rejected Cigna's self-interested governance proposals.

29. Cigna's board continued to demand that Mr. Cordani be named chief executive officer of the combined company, insisted that the combined board

consist of eight Anthem directors and seven Cigna directors, and asked Anthem to raise its price.

30. On June 18, 2015, Anthem raised its offer to \$184 per share, meeting Cigna's own pricing demand and, in light of the increased consideration, proposed that the board consist of ten Anthem directors and three Cigna directors. Anthem did not agree to appoint Mr. Cordani as the CEO of the combined company.

31. Notwithstanding their fiduciary obligations, Cigna's senior management continued to oppose Anthem's merger proposal, even though Anthem met their price demand, because of personal conflicts. Specifically, Cigna's senior management continued to focus on entrenchment, rather than maximizing shareholder value, and insisted, despite the price increase, on a board split of eight Anthem directors and six Cigna directors. Cigna's board and senior management also demanded that Mr. Cordani be guaranteed the CEO position of the combined company after two years. Anthem refused to agree to future roles, as its board determined it was critical that the combined company's board retain full authority post-closing to make key decisions regarding executive leadership in the future. Without a guarantee of the CEO position now, or a CEO succession for Mr. Cordani, Cigna's senior management continued to resist the transaction.

32. Blocked by Cigna's senior management from pursuing a transformative merger offering billions of dollars of value through the deal

premium to Cigna's shareholders, Anthem publicly announced the terms of its June 18 offer on June 20, 2015:

Again, we believe that your stockholders would choose to agree to our proposed governance structure rather than forfeit the substantial premium and other significant benefits that we can offer them in a combination of our companies. Therefore, to ensure that your stockholders are apprised of the extraordinary value afforded by an Anthem-Cigna combination, we are publicly releasing the text of this letter.

33. Under significant pressure from its shareholders, Cigna then engaged with Anthem. Yet, still an agreement was reached only after Anthem agreed that Mr. Cordani would be President and Chief Operating Officer of the combined company and that Cigna be allocated five out of fourteen seats on the Board of Directors of the combined company. The companies executed the Merger Agreement on July 23, 2015.

C. Cigna Was Required To Use Reasonable Best Efforts To Obtain Regulatory Approval

34. The Merger Agreement includes a very robust reasonable best efforts covenant regarding the Parties' obligations and efforts that must be used to obtain the required regulatory approvals. This covenant, Section 5.3 (the "Best Efforts Provision"), is more rigorous than a typical reasonable best efforts covenant because it includes the "hell or high water" requirement that Cigna "tak[e] any and all actions necessary" to avoid antitrust impediments, which is limited only by a

“material adverse effect on [the combined company]” exception that places an extremely narrow (and practically nonexistent) limit on the Parties’ required obligations and efforts.

35. Section 5.3(a) provides:

Subject to the terms and conditions of this Agreement (including Section 5.3(c)), each party will use its reasonable best efforts to prepare and file as promptly as practicable all documentation to effect all necessary applications, notices, petitions, filings, and other documents and to obtain as promptly as practicable all consents, waivers, licenses, orders, registrations, approvals, permits, and authorizations necessary or advisable to be obtained from any third party and/or any Governmental Entity in order to consummate the Mergers and the other transactions contemplated by this Agreement. *Upon the terms and subject to the conditions hereof (including Section 5.3(c)), each party will use its reasonable best efforts to take, or cause to be taken, all actions, to do, or cause to be done, all things reasonably necessary to satisfy the conditions to Closing set forth herein and to consummate the Mergers and the other transactions contemplated by this Agreement.*

(Ex. A at § 5.3(a)) (emphasis added)

36. Section 5.3(b) elaborates on Section 5.3(a) by including a “hell or high water” covenant requiring the Parties to take any and all actions to avoid antitrust impediments:

Without limiting the foregoing, but subject to Section 5.3(c), the reasonable best efforts of Anthem and Cigna shall include Anthem and its Affiliates and *Cigna and its Affiliates taking any and all actions necessary to avoid each and every impediment under the HSR Act, any Healthcare Law, antitrust law, insurance law or other applicable law that may be asserted by or on behalf of any Governmental Entity with respect to this Agreement, the Mergers*

and the other transactions contemplated hereby or that arises under or relates to any contracts between either Cigna or Anthem and any Governmental Entity, so as to enable the Closing to occur as promptly as practicable, ***including any of the following actions requested by or on behalf of any Governmental Entity, or necessary or appropriate to (I) obtain all Necessary Consents; (II) resolve any objections that may be asserted by or on behalf of any Governmental Entity with respect to the Mergers and the other transactions contemplated hereby; and (III) prevent the entry of, and have vacated, lifted, reversed or overturned, any order that would prevent, prohibit, restrict or delay the consummation of the Mergers and the other transactions contemplated hereby:***

(i) comply with all restrictions and conditions, if any, imposed, compelled, required or requested by any Governmental Entity in connection with granting any Necessary Consent of any such Governmental Entity or in connection with the expiration or termination of any applicable waiting period under the HSR Act or any other antitrust laws or any clearance under any Healthcare Laws, insurance laws or other applicable laws including: (I) ***proposing, negotiating, committing to and effecting, by consent decree, hold separate order or otherwise, the sale, divestiture, disposition, license or other disposition of any Subsidiaries, operations, divisions, businesses, product lines, contracts, customers or assets of Anthem or any of its Affiliates (including Cigna or any of its Subsidiaries),*** (II) taking or committing to take such other actions that may limit or impact Anthem's or any of its Subsidiaries' or Affiliates' (including Cigna's or any of its Subsidiaries') freedom of action with respect to, or its ability to retain, any of Anthem's or any of its Subsidiaries' or Affiliates' (including Cigna's or any of its Subsidiaries') operations, divisions, businesses, products lines, contracts, customers or assets and (III) ***entering into any orders, settlements, undertakings, contracts, consent decrees, stipulations or other agreements to effectuate any of the foregoing or in order to vacate, lift, reverse, overturn, settle or otherwise resolve any order that prevents, prohibits, restricts or delays the consummation of the Mergers and the other transactions contemplated hereby, in any case, that may be issued by any court or other Governmental Entity;***

(ii) agree to (I) enter into, suspend, amend or terminate any contract or other business relationship of Anthem or any of its Subsidiaries or Affiliates or Cigna or any of its Subsidiaries or Affiliates (including any contract with any Governmental Entity) and (II) any additional obligations relating to any contract imposed by any Governmental Entity, in each case in connection with granting any Necessary Consent of any such Governmental Entity or in connection with the expiration or termination of any applicable waiting period under the HSR Act or any other antitrust laws or any clearance under any Healthcare Laws, insurance laws or other applicable laws; and

(iii) oppose fully and vigorously (I) any administrative or judicial action or proceeding that is initiated (or threatened to be initiated) challenging this Agreement, the Mergers or the other transactions contemplated hereby and (II) any request for, or the entry of, and seek to have vacated or terminated, any order that could restrain, prevent or delay the consummation of the Mergers and the other transactions contemplated hereby, including, in the case of either clause (I) or clause (II) by defending through litigation, any action asserted by any Person in any court or before any Governmental Entity, and vigorously pursuing all available avenues of administrative and judicial appeal.

(Id. at § 5.3(b)) (emphasis added).

37. The Best Efforts Provision also ensured that Anthem, the party that pushed for the Merger, could lead the efforts to close the Merger, with Cigna's assistance: "Anthem, in consultation with Cigna, shall take the lead in coordinating communications with any Governmental Entity and developing strategy for responding to any investigation or other inquiry by any Governmental Entity related to any of the Necessary Consents." (*Id.* at § 5.3(e))

D. Cigna Failed To Use Reasonable Efforts To Obtain Regulatory Approval

1. Cigna Refused To Assist Anthem’s Reasonable Best Efforts To Obtain Regulatory Approval Without Litigation

38. Anthem and Cigna announced the Merger on July 24, 2015. On July 29, 2015, the DOJ opened an investigation of the Merger (the “DOJ Investigation”) and issued Anthem a Voluntary Request For Information (the “Voluntary Request”). Between July 2015 and September 2015, Anthem produced thousands of pages of documents and several years of Anthem enrollment data to the DOJ in response to the Voluntary Request. On August 27, 2015, Anthem and Cigna each filed their respective pre-merger notification submissions pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “HSR Act”), 15 U.S.C. § 18a.

39. On September 28, 2015, pursuant to the HSR Act, the DOJ issued subsequent Requests For Information to Anthem and Cigna (the “Second Request”). Anthem’s Second Request included 66 separate requests, including 149 subparts. Anthem certified substantial compliance with its Second Request on February 9, 2016. According to the DOJ, the date of Cigna’s substantial compliance with its Second Request was not until March 4, 2016 – nearly a month later than Anthem.

40. In the course of the DOJ Investigation, Anthem: (i) produced approximately 4 million documents from 112 Anthem custodians, (ii) produced 22 Anthem witnesses for deposition, (iii) provided 22 substantive white paper submissions, (iv) provided extensive outside economist involvement and analysis, and (v) produced over 2 terabytes of data.

a. Cigna Obstructed Anthem's Efforts To Complete And Submit White Papers To The DOJ To Defend The Merger

41. During the DOJ Investigation, Anthem proactively worked to respond to the DOJ's concerns in order to avoid a lawsuit and obtain regulatory approval. To this end, Anthem prepared and submitted to the DOJ 22 substantive "white papers" defending the Merger. The submission of white papers is a customary form of advocacy before the DOJ. Indeed, the DOJ specifically requested white papers.

42. Anthem's white paper strategy was successful in convincing the DOJ to not investigate further certain products, including vision, disability, life, individual, small group, workers compensation, and behavioral health. The white papers also substantially limited the scope of the DOJ's investigation of certain products to discrete geographic areas, including limiting its scrutiny of Medicaid to six counties in the Dallas area, and dental to Connecticut. Thus, the white paper

process helped narrow the DOJ Investigation to national accounts and a limited number of local markets.

43. Anthem led the efforts to gather the data and evidence necessary to prepare these white papers. Anthem repeatedly asked Cigna to provide specific evidence and information about Cigna's products to finalize the various white papers, but Cigna's senior management would not help. Cigna's senior management also refused to provide any assistance or information about the Merger's synergies and efficiencies that was uniquely in Cigna's possession, thus foreclosing any opportunity for Anthem to provide the most complete and meaningful white papers on those critical topics to the DOJ.

44. Instead, but for a few exceptions, Cigna responded with only generalized comments and criticisms of advocating through white papers, and that the papers were "not ready." Anthem repeatedly told Cigna that generalized comments and suggestions were not productive, and requested that Cigna provide language with specific supporting evidence, particularly as to what makes Cigna unique, an important subject that only Cigna could address. But Cigna did not provide substantive assistance, and refused to sign certain white papers. Thus, Cigna obstructed Anthem's efforts to meaningfully explain the Merger's synergies and efficiencies through white papers, and convince the DOJ to clear the Merger.

b. Cigna Obstructed Anthem's Efforts To Obtain Customer Support To Defend The Merger

45. Anthem also sought to obtain regulatory approval and avoid a lawsuit by providing the DOJ with evidence of customer support for the Merger.

46. Anthem contacted nearly 200 customers and brokers, explaining the substantial benefits of the Merger. Anthem obtained 60 sworn customer declarations supporting of the Merger, plus 10 unsworn statements of support by customers and brokers.

47. Anthem asked Cigna to reach out broadly to its customers and brokers to obtain support, but Cigna's senior management failed to obtain any meaningful customer support. Cigna's senior management did not provide Anthem with any information suggesting that Cigna reached out to a large number of customers seeking support. Cigna secured only two declarations at the beginning of the DOJ Investigation, then failed to obtain any additional customer support despite Anthem's repeated requests for customer support in the weeks leading up to the filing of the DOJ Lawsuit.

48. Additionally, Cigna's senior management ensured that Cigna's customers did not have an opportunity to express support for the deal by barring Anthem from contacting them. Cigna's senior management proposed an unworkable and inappropriate approach where third-party outreach of Cigna

customers was permissible only where Anthem could prove that such information was “essential” and that “no adequate alternatives existed” for obtaining the information. The assistance of Cigna customers was vital, and there were no adequate alternatives, but Cigna’s senior management would not allow Anthem to obtain support from Cigna customers for the Merger, nor did Cigna obtain the support on its own.

2. Cigna’s Senior Management Blocked Settlement Opportunities With The DOJ

49. A settlement with the DOJ would clear the Merger and, therefore, was highly desirable. Cigna’s senior management, however, thwarted any settlement – before and during trial – in breach of Cigna’s obligation under the Best Efforts Provision to “tak[e] any and all actions necessary” come hell or high water to avoid antitrust impediments.

a. Cigna Thwarted Any Opportunity To Settle With The DOJ Through Divestitures By Refusing To Sign Non-Disclosure Agreements And Provide Necessary Due Diligence

50. Purchasers routinely divest certain of the purchased assets in order to obtain regulatory approval. Anticipating that divestitures might be a path for obtaining regulatory approval of the Merger, the Parties discussed divestiture scenarios even before signing. As early as December 2015, Anthem began working with economists from Economists Inc., including Dr. Barry Harris and Dr.

David Argue, and Compass Lexecon, including Dr. Mark Israel, to structure a remedial proposal, which included identifying potential divestiture markets, the structure of potential divestitures, and what steps would be needed to implement a remedy. Anthem's counsel also initiated discussions with Cigna's counsel to prepare for possible divestitures. The detailed identification of potential divestiture markets was delayed, however, by Cigna's senior management's insistence that any remedial package be small. Despite these delays, Anthem developed a number of options and approaches for accomplishing potential divestitures.

51. In early-May 2016, Anthem also sent Cigna a map reflecting a proposed remedy plan that accommodated Cigna's desire to keep any settlement offer as low as possible. And during this remediation planning process, Anthem identified several potential remedial buyers.

52. The Parties always understood that for the 14 states where Anthem sells health insurance, a settlement potentially would entail the divestiture of Cigna assets because of Anthem's membership in the BCBSA. The BCBSA has a "best efforts rule," which required that Anthem derive at least two-thirds of its healthcare revenue across the country, and at least 80% of local revenue, from its BCBSA business. Consequently, the divestiture of Cigna assets would help Anthem comply with the BCBSA rules. Moreover, divestiture of Cigna assets would likely result in fewer enrollees being divested and, therefore, a better result for the

combined company. The Merger would create one combined company, so the divestiture of Cigna assets would have no particular impact on Cigna, which would no longer exist as a separate entity. Cigna's senior management, however, resisted divestitures of Cigna assets as yet another way to sabotage the Merger.

53. On June 10, 2016, the DOJ disclosed it was concerned about the competitive impact of the Merger in 35 core based statistical areas ("CBSAs") – geographic areas of at least 10,000 people – and, thus, identified a way to resolve the DOJ's objections and clear the Merger through divestitures. Even though Anthem did not believe divestitures were required in all 35 CBSAs under applicable antitrust law, Anthem promptly adjusted its remediation plan to focus on divesting assets in those areas to eliminate any purported anticompetitive impact.

54. Within a week of receiving the 35 CBSA list from the DOJ, Anthem found, met, and signed NDAs with three strategic potential buyers, all large health insurers, with serious interest in acquiring assets in the 35 CBSAs identified by the DOJ.⁴ Anthem signed a non-disclosure agreement ("NDA") with each of these potential buyers to facilitate their due diligence.

⁴ The identities of the buyers are subject to confidentiality agreements and are referred to herein as Buyer A, Buyer B, and Buyer C.

55. In June 2016, Anthem sent a draft remedial proposal to Cigna for comment. The draft stated that Anthem was agreeable to divesting Cigna's large group commercial accounts which are located in each of the 35 CBSAs identified by the DOJ and provided detailed information about the three potential buyers for such assets. Cigna failed to provide comments, and Anthem submitted the remedial proposal to the DOJ on June 19, 2016.

56. In mid-June 2016, Cigna entered into an NDA with Buyer A, but then provided Buyer A with only a one-page spreadsheet of high-level aggregated data of Cigna's large group businesses in the 35 CBSAs. Buyer A could not evaluate assets worth nearly one billion dollars based on the one-page spreadsheet, nor could any other conceivable buyer. Rather, Buyer A needed access to customary, basic due diligence, such as the customer contracts and information about the Cigna provider networks in the 35 CBSAs.

57. Sellers cannot sell assets without providing information about them to buyers, and Cigna was specifically required to do so under the Best Efforts Provision, which expressly required Cigna to "tak[e] any and all actions necessary to avoid each and every impediment under the HSR Act . . . [or] antitrust law" including "proposing, negotiating, committing to and effecting . . . the sale, divestiture, disposition, license, or other disposition" of Cigna assets. (Ex. A at § 5.3(b))

58. Cigna's senior management, nonetheless, refused to provide Buyer A with any other information about the assets unless Buyer A entered into a second NDA, this one restricting Buyer A's ability to engage in alternative M&A transactions, a completely inappropriate and non-customary provision. Cigna's senior management's demand for a second NDA was designed to foreclose a settlement divestiture: Buyer A would not sign this non-market lock-up agreement, and Cigna dragged its feet in negotiating a reasonable compromise, thereby forestalling the provision of any meaningful due diligence whatsoever and preventing a divestiture that could have cleared the Merger.

59. Anthem requested that Cigna withdraw its highly unusual request for a second NDA, but Cigna's senior management refused and delayed for more than a month from when Anthem first requested Cigna to execute an NDA with Buyer A. It was only in the hours before the DOJ filed its lawsuit that Cigna's senior management relented and negotiated an NDA with Buyer A. Customary information, however, was still not made available, and Buyer A could not proceed with any purchase of assets, so Cigna's senior management's unreasonable NDA demands prevented a divestiture that could have cleared the Merger. Notably, the information requested was not particularly sensitive or confidential. Indeed, Cigna supplied far more sensitive information to Anthem in connection with the Merger. Thus, Cigna had already established confidentiality agreements and review

protocols that were sufficient to preserve and protect Cigna's competitively sensitive information.

60. Despite numerous requests, Cigna's senior management also refused to sign any NDA with either Buyer B or Buyer C – even though the proposed NDA contained the same specific terms as Cigna's first NDA with Buyer A – or provide those potential buyers with the one-page spreadsheet provided to Buyer A or any other diligence information because, according to Cigna, they would not be viewed as viable buyers by the DOJ. Unable to perform any due diligence whatsoever, Buyer B and Buyer C also were unable to evaluate, and thus purchase, assets that could have cleared the Merger.

61. Anthem asked Cigna to create and populate a data room with due diligence information, so that the potential buyers had sufficient information to submit informed and credible bids. Given Cigna's senior management's unreasonable confidentiality position, Anthem agreed to have Cigna create and control the data room and adopt protocols to govern access to the data room. Cigna's senior management, however, refused to create a data room or engage in other customary, and necessary, provision of information about the assets so as to allow a buyer to transact.

62. Cigna tried to distract from its efforts to block the Merger by stating that it had doubts that the DOJ would view Buyers A, B or C as viable buyers. But

after receiving Anthem's June 19, 2016 proposal, the DOJ was interested in details about how a divestiture would work. The DOJ also sought to meet with the three potential buyers. Buyers A, B, and C were viable buyers who were prepared to advocate before the DOJ, but were never provided with the due diligence necessary to effectively advocate or reach an agreement. Moreover, having an agreement to divest overlapping assets prior to trial would have provided a powerful defense at trial, irrespective of the DOJ's view of the buyer.

63. Cigna rejected each request by Anthem to sign NDAs and supply the necessary due diligence. Anthem then asked Cigna's senior management to identify potential buyers with whom it would actually engage, but Cigna's senior management, failed to do so, and engaged with no one.

64. Cigna's senior management also refused to provide Anthem with information necessary for Anthem to analyze the financial impact of divesting membership in the 35 CBSAs, including a breakdown of the gross revenue, gross margins by product, operating income and allocated expenses associated with this membership. Cigna's senior management refused to provide such information, even though there would be customary safeguards put in place, because it was not "prepared to put [its] competitive position in jeopardy by sharing commercially sensitive information with [its] competitors" Cigna's senior management's pretext of competitive harm as an excuse to prevent sharing information to Anthem

was baseless. Parties to a merger regularly share information pursuant to NDAs as a matter of course, and Cigna was expressly required to do so here under the Best Efforts Provision. But, instead of using its reasonable best efforts to consummate the Merger, Cigna treated its merger partner as an adversary.

65. In early July 2016, at the request of the DOJ, Anthem prepared a detailed remedial proposal based on its understanding of Cigna's business with the goal of obtaining regulatory clearance for the Merger. Cigna's senior management allowed Anthem just one conversation with a Cigna business representative about the proposal in response to Anthem's repeated requests for assistance. Anthem provided a draft proposal to Cigna and requested input and comments to present the strongest case for remediation. Anthem included with its draft proposal a targeted list of questions seeking information regarding provider collaboration, case managers, data analytics, and technology, in Cigna's possession that would assist in providing a compelling and complete remediation package.

66. When Anthem provided the draft proposal to Cigna, Anthem explicitly informed Cigna that "time is of the essence." Cigna repeatedly stated that it would respond by a date certain, but failed to do so. Then Cigna just stopped responding at all, so, on July 10, 2016, Anthem again submitted the remedial proposal on July 10, 2016, without Cigna's help.

67. Because of Cigna’s senior management’s refusal to contribute, the remedial proposal did not benefit from the requested factual support, access to information and business people, or constructive feedback—all of which would have helped secure clearance or a favorable judicial resolution on the basis of the proposal. Cigna’s senior management’s refusal to provide necessary factual support and access to information and business people to Anthem and potential buyers foreclosed Anthem from settling with the DOJ or proving at trial that the Parties had divested all assets creating any purported anti-competitive impact.

68. Given Cigna’s senior management’s refusal to provide sufficient information to potential buyers, Anthem’s efforts to achieve a regulatory approval through remediation without litigation were unsuccessful. The DOJ filed its lawsuit eleven days after Anthem’s July 10, 2016 proposal.

69. Cigna’s refusal to engage with potential buyers or to provide necessary information not only undermined Anthem’s remediation efforts, it also hampered Anthem’s ability to defend the Merger at trial. The District Court enjoined the Merger based on the purported anticompetitive impact on sales to large “national accounts” in the fourteen states in which Anthem operated under the Blue Cross Blue Shield network, and on the sale of health insurance to large groups in Richmond, Virginia. (Op. at 1-2) Those were precisely the locations that Anthem was prepared to remedy by divesting assets to Buyers A, B, and/or C,

but Cigna thwarted Anthem's efforts to cure by refusing to provide any potential buyers with the necessary information about the assets. Had Cigna cooperated as required, the District Court's basis for enjoining the Merger could have been eliminated and the Merger cleared.

b. Cigna Thwarted Any Opportunity To Settle With The DOJ Through Mediation

70. Even after the lawsuit was filed, Anthem continued to try to achieve regulatory approval through settlement with the DOJ. Cigna's senior management, on the other hand, continued to stonewall the NDA negotiations with potential buyers and refused to provide diligence information to Anthem or the buyers. Without an ability to assess the financial impact and valuation of the proposed divestitures, the three Anthem-identified buyers lost interest in a transaction.

71. At a status conference on August 12, 2016 the District Court Judge presiding over the DOJ Lawsuit, Judge Jackson, suggested conducting settlement negotiations as the litigation progressed. In response, Anthem's counsel circulated to Cigna a draft e-mail to Judge Levie, the former judge who Judge Jackson appointed as the Special Master, requesting his assistance in appointing a mediator to facilitate settlement discussions. Anthem did not send the e-mail to Judge Levie because Cigna requested more information about Anthem's settlement strategy beforehand. So, Anthem met with Cigna on September 2, 2016 to discuss the

settlement strategy in more detail. Cigna's senior management then, once again, simply disengaged from settlement discussions.

72. Despite Cigna's senior management's previous refusals to support any of Anthem's efforts to settle with the DOJ, in September 2016, Anthem developed yet another remediation plan involving a small number of local, strong buyers in certain states. Cigna had previously expressed a preference for such a remedial plan – one that limits divestiture to large group commercial business in the limited states that Anthem proposed. In an effort to get Cigna to comply with its obligations under the Agreement, Anthem even indicated that it would be amenable to a remediation plan that included a sale of Anthem assets in certain states. This remediation plan would also show the District Court that the Parties were prepared to address certain local market overlaps, which would increase the chance of successfully consummating the Merger. Anthem provided Cigna an outline of the remediation plan and the immediate next steps that should be taken by the Parties. Cigna's senior management again refused to provide any support to effectuate this remedial plan or to engage with Anthem on alternative remedial plans.

73. During the November 11, 2016 conference with Anthem, Cigna, and the DOJ, Judge Jackson again inquired into the possibility of mediation. Anthem immediately indicated its commitment to begin mediation at any time.

74. After the conference, Judge Levie again asked the parties to consider mediation, noting that Judge Jackson had inquired whether Judge Levie would consider acting as the mediator if acceptable to the parties. Anthem pleaded with Cigna to agree to mediate, but Cigna refused. Cigna would not agree to even inform the DOJ and Judge Levie that Judge Levie would be an acceptable mediator because that presupposed an interest in mediation.

75. Judge Levie encouraged mediation twice more the following day, expressing his firm belief in settlement and even suggesting potential dates for mediation, but Cigna again refused. Cigna tried to deflect its refusal to follow Anthem's lead, as required, by pointing to the DOJ which, like Cigna, also did not want to mediate. Cigna simply chose to align with the Parties' adversary.

76. On November 16, 2016, Anthem notified Cigna that under the Merger Agreement, Anthem is the party responsible for developing strategy for defending the Merger, and such strategy including engaging in mediation. Cigna's refusal to mediate, therefore, was a breach. Cigna waited until the first day of trial, after the opportunity for pre-trial mediation had passed, to respond falsely that it had not declined mediation, but rather "Cigna's position has been, and continues to be, that it has no objection to mediation."

77. Two days later – three days into the DOJ's case in chief at trial – Judge Levie again asked the parties to mediate, stating that based on his

considerable experience it was an appropriate time to discuss settlement. Anthem then asked Cigna to communicate to Judge Levie its statement from just two days earlier that it was willing to mediate, but Cigna refused to do so. Rather, Cigna said it was unwilling to mediate unless Anthem satisfied two conditions – “a viable proposal from Anthem” and “support from the DOJ.” Anthem had already formulated and shared viable proposals and further noted that mediation provides a process for developing consensual solutions. And the Parties did not need an agreement with the DOJ because Anthem was trying to show a united interest in settlement on the part of the defendants and to pressure the DOJ into mediating.

78. If Cigna’s senior management had interest in the Merger, there could have been no conceivable objection to mediating, which could only have helped achieve a settlement. Refusing to mediate guaranteed that the parties would not achieve a consensual resolution clearing the Merger.

79. Cigna’s refusal to participate in mediation continued throughout the trial, when Cigna continued to reject any attempts to pursue mediation in an effort to resolve the litigation to allow for the consummation of the Merger.

3. Cigna Refused To Defend The Merger

a. Cigna Refused To Communicate Support For The Merger

80. After the DOJ filed a lawsuit in July 2016 challenging the Merger as anticompetitive in violation of Section 7 of the Clayton Act, Anthem asked Cigna to participate in a joint press release expressing their commitment to the transaction and opposition to the DOJ Lawsuit, but Cigna's senior management refused to do so. Consequently, Anthem was left to issue a press release on its own stating that it "is fully committed to challenging the DOJ's decision in court."

81. Cigna then issued a press release that did the opposite of committing to fight for the deal, as required. Cigna told the market it was "evaluating its options" and questioning whether the transaction "could close . . . at all":

Today, the Department of Justice announced that it will challenge our proposed merger with Anthem. Given the nature of the concerns raised by the DOJ and the overall status of the regulatory process, which under the terms of the merger agreement was led by Anthem, ***Cigna is currently evaluating its options*** consistent with its obligations under the agreement. In light of the DOJ's decision, we do not believe the transaction will close in 2016 ***and the earliest it could close is 2017, if at all.***

(emphasis added)

82. Thus, even though the Merger Agreement contemplated a DOJ challenge and obligated Cigna to use its reasonable best efforts to oppose the DOJ Lawsuit, Cigna told the public, instead, that it would evaluate its options – and

there were none, other than to fight – and questioned whether the transaction could close at all, again signaling to the market, the DOJ, and other regulators the fact that Cigna’s board and senior management were not interested in the Merger.

b. Cigna Delayed Filing An Answer

83. It was important to move quickly to ensure that the Merger did not time-out based on any delay in the litigation, so Anthem filed its Answer on July 26, 2016, five days after DOJ filed the complaint. In light of the tightly compressed time frame for discovery in merger litigation, Anthem pushed the DOJ to discuss a discovery schedule. On July 27, 2016, the DOJ insisted on having Cigna’s Answer prior to holding the Rule 26(f) discovery conference. The same day, Anthem’s counsel asked Cigna if it would file its Answer in the next day or two. On July 28, Cigna responded that it was “endeavoring to be in a position to file its Answer early next week,” which was not consistent with the Best Efforts Provision in light of the need to move forward expeditiously.

84. Remarkably, Cigna did not file its Answer until September 19, 2016, nearly two months later. It was only through Anthem’s efforts that the DOJ agreed to hold the Rule 26(f) conference before Cigna filed its Answer. Nonetheless, Cigna’s delay served its strategy of impeding the progress of the litigation, instead of “taking any and all actions necessary” to enable the Merger to close “as promptly as practicable” as required under the Merger Agreement.

c. Cigna Refused To Provide Any Pre-Trial Assistance

85. Anthem continued to use its reasonable best efforts to defend the Merger, taking and defending over 100 depositions, preparing all of the substantive pleadings and briefs defending the Merger, and arranging the submission of non-party witness declarations and 10 expert reports in support of the Merger. Cigna continued to work to undermine the Merger.

86. Anthem repeatedly provided Cigna with draft litigation materials, seeking its comments and input, but Cigna refused to provide any:

- (a) Despite Anthem's requests, Cigna did not provide a single comment on any of the Defendants' expert reports, key documents in the case.
- (b) Despite Anthem's requests, Cigna also failed to offer any insights, reactions, or comments about the DOJ's expert reports, even though they constituted a critical component of the DOJ's case.
- (c) Cigna attended over 100 depositions in this case, but posed limited questions to only 3 witnesses, and those were unhelpful to the Merger.
- (d) Anthem sent Cigna a draft pre-trial brief, a key document, and requested Cigna's input. Cigna failed to provide any help at all. In fact, to make absolutely clear its refusal to support the Merger, Cigna remarkably refused even to sign that document. In other words, Cigna refused to state or join any position supporting the Merger.
- (e) Cigna refused to provide Anthem with reasonable access to the Cigna witnesses testifying at trial. Anthem spent an average of sixteen to twenty hours preparing each of the Anthem witnesses. Although what was at stake was a transformative

\$54 billion merger, Cigna only agreed to give Anthem a mere one hour of witness preparation time with key Cigna witnesses, David Cordani (Cigna’s CEO) and Jeff Thackeray (a Cigna VP), even though Anthem would be putting on the witnesses (after Cigna decided not to put on its own witnesses), an amount of time that would have been insufficient for a small claims case. Anthem was likewise limited to only 90 minutes with Dr. Charles Smith, Cigna’s Chief Medical Officer. With respect to Eugene Rapisardi, a Cigna General Manager, Anthem’s counsel was never permitted to meet with him at all despite Anthem’s requests.

Incredibly, Cigna’s counsel asserted that “Anthem has mistaken the contractual deference Cigna owes to Anthem in terms of the setting of litigation strategy and our courtesy of allowing you to meet with Cigna witnesses during our prep sessions.” Cigna’s counsel continued, “Anthem’s demands [for more than one hour in preparation of trial witnesses] amount to an abuse of a courtesy, and we will treat it accordingly as we confer with our client and the Cigna witnesses concerning your request for additional access to those witnesses.”

d. Cigna Impeded Anthem’s Integration Efforts And Undermined Anthem’s Efficiencies Defense

87. Under the Merger Agreement, Anthem took the lead in defending the Merger. The centerpiece of Anthem’s defense to the DOJ Lawsuit was that the Merger will create substantial efficiencies and other procompetitive effects that will directly benefit consumers, and that such benefits outweigh any alleged anticompetitive effects. Rather than comply with its obligation under the Best Efforts Provision to “tak[e] any and all actions necessary” to avoid antitrust impediments, Cigna instead took affirmative action to sabotage Anthem’s efforts to prove this key defense at trial. [REDACTED]

[REDACTED]

[REDACTED] (Op. at 119)

88. Anthem worked tirelessly in developing the efficiencies through integration planning and otherwise. This work was necessary to ensure that post-close, the combined company would be in a position to serve its customers without interruption and also to document merger-specific synergies and efficiencies, which was an important part of the DOJ's Investigation and a critical defense to the DOJ Lawsuit.

89. Anthem retained McKinsey & Company ("McKinsey"), the leading management consultant firm with unparalleled experience and expertise in integration efforts. McKinsey dedicated 165 people to the integration work from its healthcare team (which has created synergy savings for healthcare companies of over \$100 billion), and its senior merger management team (which has integrated hundreds of mergers, including one with a transaction value in excess of \$100 billion).

90. Notwithstanding McKinsey's unparalleled qualifications and experience, Cigna's senior management complained that Anthem retained McKinsey to work on integration, rather than Bain Capital, a firm with whom Mr. Cordani had a relationship.

91. Anthem could not fully develop a plan for integrating Cigna without Cigna's help. Cigna's senior management disengaged from the integration work following a dispute over the extent of Mr. Cordani's role at the combined company. [REDACTED]

[REDACTED]

[REDACTED] (Op. at 15)

Anthem promptly resolved the dispute about Mr. Cordani's role so that three lines of business, Commercial, Government and Diversified Business, would all report to him post-closing, which were exactly the responsibilities he desired, but Mr. Cordani was not appeased. Cigna, under his direction, worked to block integration and to bar meetings with Cigna's senior management team that Anthem's CEO requested and needed in order to develop the integration plan.

92. Cigna's senior management also prevented Anthem's integration plan from being completed. A key component of integration planning was "Value Capture," which was the process by which the synergies and efficiencies for the newly formed company would be identified and realized, including utilizing Cigna's collaborative care and wellness offerings. Cigna's senior management refused to engage in any "Value Capture" work after March 2016 citing alleged "deal uncertainty." In other words, rather than fighting for the Merger against uncertainty, as required, Cigna was obstructing it, which in fact was creating deal

uncertainty. [REDACTED]

[REDACTED]

[REDACTED] (Op. at 117)

93. Then, when the DOJ Lawsuit was filed, and the work became even more important, Cigna stopped all work on integration, leaving Anthem on its own. The District Court focused on the problem, asking incredulously at trial: “*How do you work on integration without talking to the person you’re integrating with?*”

94. Cigna’s senior management’s refusal to participate meaningfully in the “Value Capture” integration process undermined Anthem’s key defense at trial that the Merger would create efficiencies that would generate significant medical cost savings, the vast majority of which ultimately would be passed along to consumers. And the District Court enjoined the Merger based on its concerns that the efficiencies could not be achieved because the “*pre-merger integration planning that is necessary to capture any hoped-for synergies is stalled and incomplete*” and [REDACTED]

[REDACTED]

(Op. at 9, 116) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (*Id.* at 121-22)

95. Cigna's senior management's refusal to assist meaningfully in the merger integration planning efforts also resulted in significant extra work for Anthem and its advisors, was highly disruptive and demotivating to the integration team and was time consuming and costly. Cigna's actions and inactions increased Anthem's expenses significantly.

e. **Cigna Further Harmed The Efficiencies Defense By Disclosing The Parties' Private Letters To The Press**

96. Cigna's board and senior management started a series of letters to create a false record that Anthem had breached the Merger Agreement. Cigna then ensured that this record was fed to the DOJ to support its argument against the Merger's efficiencies – that the conflict between the Parties would prevent successful integration and the efficiencies that flow from the Merger.

97. Cigna's tactic was to send letters to Anthem accusing it of breaching the Merger Agreement by claiming Anthem breached the Best Efforts Provision. This naturally precipitated a response that it was, in fact, Cigna that was in breach of the Merger Agreement. Nonetheless, Anthem sought Cigna's help to obtain regulatory approval. So while Cigna was trying to set up a false breach claim, Anthem was trying to get Cigna to help obtain regulatory approval. These were

private letters between two merger parties discussing merger-sensitive issues. Indeed, the letters could not be made public under the terms of the Merger Agreement. (Ex. A at § 5.2)

98. The letters, however, did not remain private. Rather, copies of certain letters were leaked to the national media. On or about May 20, 2016, the Wall Street Journal contacted Anthem, explaining that it had obtained the letters that Anthem's and Cigna's Boards of Directors had exchanged, as well as several other letters the two companies' general counsel had exchanged. The Wall Street Journal sought Anthem's comment on an article it planned to publish.

99. Anthem asked Cigna to issue a joint statement before the story ran to send a unified message to shareholders and regulators that each of the companies remained entirely committed to obtaining regulatory clearance and closing the transaction, but Cigna refused to join a statement supporting the Merger. In fact, Cigna threatened that if Anthem released a statement supporting the Merger, Cigna would release a response disputing Anthem's release, further signaling problems to the DOJ, regulators and consumers.

100. Anthem repeatedly asked Cigna whether it had leaked Anthem's and Cigna's common interest communications to the press, but Cigna refused to answer. Notably, however, only Cigna benefitted from the release, by signaling

problems with the Merger, and only Cigna refused to mitigate any such perception through a joint statement of support.

f. Cigna Then Supported Broad Disclosure Of The Letters To The DOJ In An Effort To Help The DOJ Block The Merger

101. The DOJ was provided a limited number of the letters exchanged between Cigna's CEO and Anthem's CEOs during its investigation of the Merger prior to the lawsuit. Cigna further undermined Anthem's efficiencies defense by ensuring that even more information about the Parties' private disputes was produced to the DOJ for use in the lawsuit in breach of the Best Efforts Provision.

102. Cigna's plan to feed the DOJ more support was set in motion after a question from the District Court at the August 12, 2016 pre-trial and status scheduling conference inquiring whether the Merger Agreement would be terminated, thus mooting the case. Citing "[t]he contentious nature of the merger," referenced in the DOJ Complaint, the District Court asked whether "there [was] any reason why the parties shouldn't be required to keep me apprised of the status of those issues as we go along, such as if they initiate negotiations to terminate or unwind or if there are issues concerning compliance with the terms of the agreement" and concluded, "[s]o I want to know if something happens to change the underlying assumption, which is that we're marching towards April 30th [the extension date under Merger Agreement]."

103. Misusing the District Court's request, which was simply to be informed if the Merger Agreement was terminated, Cigna's counsel, on August 16, 2016, unilaterally informed the DOJ at a hearing before Judge Levie, the Special Master handling discovery matters, that the general counsel to Anthem and the general counsel to Cigna had exchanged letters accusing each other of breaching the Merger Agreement. The next day, the DOJ served a request for production seeking documents "discussing Anthem's or Cigna's compliance or noncompliance with any term of the Merger Agreement," including "communications between counsel for Anthem and counsel for Cigna (whether in-house or outside counsel)."

104. On August 22, 2016, the Parties filed objections to the DOJ's discovery request on the grounds of common interest privilege. On a meet and confer, Anthem articulated its interpretation of the DOJ's requests and asserted its common interest privilege, and the DOJ did not object. Rather than defer to Anthem or let the DOJ handle its own discovery issues, Cigna advocated for a broader interpretation of the requests and also opposed Anthem's common interest privilege position, asserting that certain documents were not privileged at all and, therefore, could be made public. In addition to proposing a broader production to the DOJ of the correspondence than Anthem proposed, Cigna also helped the DOJ

by proposing to produce fewer redactions than Anthem to ensure that more evidence of the Parties' disagreement would be disclosed.

105. Cigna made it impossible for Anthem to successfully maintain its common interest privilege because the counterparty Anthem claimed to share a common interest with disavowed such interest. In other words, Anthem then had to litigate against Cigna, its merger partner, to protect against the production of potentially damaging Merger-related documents to an adversary, when Cigna was contractually obligated to use reasonable best efforts to defend the Merger. And Cigna's efforts to assist the DOJ were successful as the Court accepted the DOJ's expanded scope of its document request, as proposed by Cigna. Judge Levie, however, did overrule Cigna's pro-DOJ position concerning work product claims for the majority of the documents at issue, which stands as a rare example of a defendant losing in its efforts to produce potentially damaging information to an adversary.

g. Cigna Helped The DOJ Undermine The Merger At Trial

106. Cigna then took affirmative steps to help the DOJ at trial, including by further sabotaging Anthem's efficiencies defense. Before the trial even started, Cigna asked the District Court for permission to object to Anthem's questions. In

other words, Cigna asked to behave as an adversary to the Merger, rather a party obligated to use reasonable best efforts to support it. The District Court observed:

Well, it's completely extraordinary. I've never seen it done even in a criminal trial with multiple co-defendants. . . . [T]his is nothing I've ever seen before. I have trouble even wrapping my mind around it [O]bjecting when you're both the defense here, I find that so highly extraordinary I'm not going to tell you right now it's prohibited. But I can tell you I find it highly unorthodox, and I'm not entirely sure that it's even permissible.

107. Cigna then went further at trial. Acting as an adversary to the Merger, rather than a supporting party, Cigna did not cross-examine a single DOJ witness. Rather, Cigna's counsel elected to cross-examine, Dr. Mark Israel, Anthem's key expert witness, and tried to discredit his authority in the field and attack his findings. [REDACTED]

[REDACTED] (Op. at 114 n.46) Hence, rather than supporting the key expert witness testifying in support of the Merger, Cigna cross-examined him in an effort to sabotage the Merger.

108. Cigna's counsel also cross-examined Anthem's CEO, Joseph Swedish, after Anthem determined that no cross-examination was necessary, about Mr. Cordani's role and responsibilities in the combined company and whether Mr. Cordani expressed his commitment to stay with the company post-closing.

Anthem had promptly resolved the issue about Mr. Cordani's responsibilities after it was raised by Cigna's board, so there was no reason for Cigna's counsel to cross-examine Mr. Swedish in this regard other than to unnecessarily highlight the extent to which Mr. Cordani had previously disagreed with Mr. Swedish. With respect to Mr. Cordani's intentions to remain, Mr. Swedish testified truthfully that Mr. Cordani had not spoken directly to Mr. Swedish about any desire to stay, which was because Mr. Cordani refused to meet with Mr. Swedish one-on-one since January 2016. And, there was no need to cross-examine, and try to discredit the testimony of Anthem's CEO, given that Mr. Cordani was about to testify next and could testify to his own intentions and expectations.

109. Cigna's CEO, Mr. Cordani, then attacked the key efficiencies defense by testifying that he questioned the ability of the combined companies to achieve the more than \$2 billion of medical cost savings that Anthem was advancing as a defense of the Merger due to Cigna's disagreement regarding integration strategy. During examination by the DOJ, Mr. Cordani testified that Cigna is not "supportive" of certain of Anthem's integration strategies, which would be "extraordinarily disruptive in the marketplace," and make "the existing [Cigna] offering less competitive in both Anthem and non-Anthem states." He also testified for the DOJ:

Q: And, as I think you said, the Bias Blue strategy [Anthem's initial integration strategy] will destroy the value of Cigna?
A: It will erode it pretty rapidly.
Q: Including the network?
A: Correct.
Q: Provider relationships?
A: Correct.
Q: Customer choice will be reduced?
A: Correct.
Q: Innovation will be at risk?
A: I think it would be at risk.
Q: And one plus one will not equal three?
A: To be determined, but harder to achieve.

110. Mr. Cordani further failed to support the Merger when he testified that he disagreed with a newspaper advertisement run by Anthem which stated the centerpiece of Anthem's defense—that Anthem and Cigna national account customers “will collectively reduce their health care costs by an additional \$2 billion annually, and potentially much more, as a result of the Anthem-Cigna combination.” Mr. Cordani testified:

It's not our number, so it's hard to agree with it. But, to the best of our knowledge, the work that was done here was around identifying the discount opportunity of either the Anthem discount or the best of the two organizations discount. And our view is that this is incredibly important integration work because we believe that, and I believe today, that there's an opportunity to improve medical costs in the one-plus-one-is-three. But if you look at it just through a discount standpoint, it's a narrow-minded view because discount is only a portion of the equation. . . . [The calculation] ignores both utilization in terms of the number of services, but the mix of the services, as well as the venues in which the services are consumed. . . . So the point is, it's an incomplete – it's an important – the discount's important, but

an incomplete part of the equation. . . . So all that being said, we view that it is, at best, incomplete and, therefore, inaccurate.

111. [REDACTED]

[REDACTED]

[REDACTED] (Op. at 119 (emphasis added)) [REDACTED]

[REDACTED]

[REDACTED] (*Id.* at 22) [REDACTED]

[REDACTED]

[REDACTED] (*Id.* at 108

[REDACTED]; 113

[REDACTED]

[REDACTED]

[REDACTED] 114 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

112. Mr. Cordani's rapport with the DOJ was remarkable in serving as a witness for the DOJ. Indeed, the Wall Street Journal reported:

Some of Mr. Cordani's testimony appeared to cut against Anthem's defense of the deal. He said the integration strategy favored by Anthem, not supported by Cigna, could hurt competition by eroding Cigna's offerings, an argument posed by the Justice Department. In fact, he said, Cigna disagreed with an ad run by Anthem that touted the merger's competitive benefits, because Cigna believed "choice would be potentially be constricted" for insurance clients under Anthem's preferred setup.

Brent Kendall & Anna Wilde Mathews, *Testimony Shows Anthem and Cigna at Odds Over Proposed Merger*, Wall St. J., Nov. 28, 2016.

113. Cigna also breached the Best Efforts Provision when instead of making a closing argument in support of the Merger, Cigna made closing remarks against the Merger. During the closing, Anthem's counsel offered that the disputes between the two Parties arose from friction resulting from having two driven CEOs that, at times, had differing views, but that contentiousness at the CEO level has not had a material effect on the ability to be integrated on Day 1. Rather than support Anthem's position, Cigna's counsel stated during his closing that the disagreements between the companies that the DOJ was relying upon to dispute the efficiencies went beyond the CEO level to "senior management, . . . the [B]oard [of Directors], and the company as a whole." In addition to supporting the DOJ's position in opposing the Merger, and contradicting Anthem's argument about the

ability to achieve efficiencies, Cigna's argument was unsupported by evidence. So, Cigna went outside of the record to make an argument supporting the DOJ in blocking the Merger.

114. Cigna then refused to provide comments to Anthem's proposed findings of fact and conclusions of law – the submission providing the very basis for clearing the Merger. In other words, Cigna refused to submit any legal or factual basis for clearing the Merger. Incredibly, Cigna also refused to sign its name to the proposed findings of fact and conclusions of law or submit any of its own. Thus, Cigna did not offer to the District Court any basis whatsoever for defending the Merger in fact or in law. To the contrary, by refusing to sign the detailed proposed findings of fact and conclusions of law offered in support of the Merger, Cigna totally undermined the Merger.

115. And to make matters worse, Cigna's counsel highlighted to the District Court during closing remarks to the first phase of the trial that it had not been willing to sign Anthem's proposed findings of fact and conclusions of law in support of the Merger, apparently concerned that the signal of its opposition to the Merger had been missed. The damaging conduct had not been lost on the District Court:

What am I supposed to make of that? I wasn't going to ask you that question in open court because they're just drafts to this point, but since you brought it up, your name isn't on them; Cigna's name isn't

on them. What am I supposed to think that tells me? What does that mean?

116. Cigna also did not sign the final submissions, or otherwise offer any support for the Merger, and the only conclusion the District Court could reach is that Cigna did not agree with any of the facts or conclusions of law supporting the Merger. The District Court found Cigna's conduct remarkable:

[T]he Court cannot fail to point out that it is bound to consider all of the evidence in the record in connection with the question of whether the merger will benefit competition, and in this case, *that includes the doubt sown into the record by Cigna itself.*

This brings us to the elephant in the courtroom. In this case, the Department of Justice is not the only party raising questions about Anthem's characterization of the outcome of the merger: *one of the two merging parties is also actively warning against it. Cigna officials provided compelling testimony undermining the projections of future savings, and the disagreement runs so deep that Cigna cross-examined the defendants' own expert and refused to sign Anthem's Findings of Fact and Conclusions of Law on the grounds that they "reflect Anthem's perspective" and that some of the findings "are inconsistent with the testimony of Cigna witnesses."* Anthem urges the Court to look away, and it attempts to minimize the merging parties' differences as a "side issue," a mere "rift between the CEOs." *But the Court cannot properly ignore the remarkable circumstances that have unfolded both before and during the trial.*

(Op. at 9 (emphasis added))

117. Cigna's failure to support the Merger and attempts to sabotage Anthem's defense of it did not go unnoticed. National media reported that Cigna's "lack of enthusiasm about its \$54 billion Merger with rival Anthem Inc. has given the U.S. Department of Justice a leg up in an ongoing trial in D.C. federal court."

Jimmy Hoover, *Anthem, Cigna Discord Could Give DOJ Edge In Merger Trial*, Law360, Dec. 21, 2016. Media reports also accurately predicted that “Cigna’s antics might . . . be the merger’s undoing.” *Id.*

118. The national media also reported that Cigna’s counsel “openly disavowed an assertion from Anthem’s attorney that the ‘rift’ the government had made so much of was in reality nothing more than a dispute between the two companies’ CEOs. Remarkably, [Cigna’s counsel] said Cigna’s misgivings stretch all the way down the board of directors and represent the views of the company itself.” *Id.* Another article reported that “Cigna, which may collect \$1.85 billion if the deal is blocked, has done little to help Anthem’s counsel since the trial began Nov. 21, at one point even cross-examining its merging partner’s own witness.” Jimmy Hoover, *Anthem’s Defense In \$54B Merger Trial Met With Skepticism*, Law360, Dec. 13, 2016.

119. Another media account quoted three antitrust lawyers who all agreed that Cigna’s actions were “potentially fatal” to the case. Jimmy Hoover, *Anthem, Cigna Discord Could Give DOJ Edge In Merger Trial*, Law360, Dec. 21, 2016. One lawyer observed that “[i]f efficiencies is your major defense, and one of the parties is not willing to work on integrating the two companies, how in the hell can you work on achieving the efficiencies?” *Id.* Another commented that merging partners are normally expected to be “cheerleaders for each other,” finding Cigna’s

behavior “extremely unusual” and “[t]o put it in certain vernacular, if I were Anthem, I would be pissed out of my mind.” *Id.*

E. Anthem Extended The Termination Date Through April 30, 2017

120. Section 7.1(b) of the Merger Agreement provides that either Party may voluntarily terminate the Merger Agreement if the Merger has not been consummated on or before January 31, 2017 (the “Termination Date”). If neither party terminates, the Agreement continues by its own terms.

121. The Termination Date may be extended unilaterally through April 30, 2017 if all conditions to Closing have been satisfied, or are capable of being satisfied at Closing, except for required regulatory approvals and the absence of a judicial order preventing the Closing.

122. By January 18, 2017, the District Court had not yet issued its decision. Because a decision could soon be forthcoming, Anthem contacted Cigna to outline detailed next steps to pursue antitrust clearance and consummation of the Merger:

If the District Court’s decision turns out favorably, and DOJ files an appeal, Anthem intends to resist the appeal vigorously. If the District Court’s decision turns out unfavorably, Anthem intends promptly to seek an expedited appeal of the decision. Additionally, in the case of either a favorable or unfavorable decision, we believe that there is a path forward involving outreach and potential settlement with the DOJ, given that there will soon be a new Attorney General and Assistant Attorney General with responsibility for overseeing the Antitrust Division. We therefore plan to explore making renewed outreach and settlement approaches with the new leadership at the

DOJ as quickly as possible. In the event of a favorable decision, we would seek outreach to head off an appeal.

Next steps, of course, require some time. It is Anthem's position that Cigna has no right to terminate the merger agreement on or after the initial termination date, January 31, 2017, because its failure to perform its obligations will be a proximate cause of any failure to consummate the merger by any such date. There is no reason, however, to debate that now (and we understand that Cigna will disagree with Anthem's position on this issue) because we intend to send Cigna an extension notice this week extending the termination date through April 30, 2017 so there is no doubt to the market about Anthem's continued commitment to the transaction.

We plan to move full steam ahead on the outreach/settlement option and we hope that Cigna will be a cooperative and active participant in those efforts with us. We read David's comments at the JPMorgan conference and hope that we can work together cooperatively with the new DOJ leadership to reach a resolution that will allow us to consummate this transformative and value enhancing merger.

123. Notwithstanding Cigna's obligation to comply with the Best Efforts Provision to "tak[e] any and all actions necessary" come hell or high water to avoid antitrust impediments, including vigorously pursuing all avenues of appeal, Cigna again failed to support the Merger and only responded that it "received [Anthem's] note and Cigna will take it under consideration."

124. On January 18, 2017, the only condition to Closing that was not satisfied, or capable of being satisfied at Closing, was judicial and regulatory approval of the Merger. Thus, on the morning of January 18, 2017, Anthem provided Cigna with written notice of the extension of the Termination Date through April 30, 2017 pursuant to Section 7.1(b) of the Merger Agreement. Later

that day at approximately 2:30 p.m., as required by Section 5.8 of the Merger Agreement, Anthem also provided Cigna with a draft copy of the SEC Form 8-K that it intended to file the next morning announcing the extension of the Termination Date through April 30.

125. Cigna did not respond to Anthem. Instead, on January 19, 2017, Cigna filed a SEC Form 8-K that Cigna received “written notice from Anthem seeking to extend” the Termination Date and that “[f]ollowing the issuance of the Court’s opinion, Cigna intends to evaluate its options in accordance with the Merger Agreement.” In further breach of the Merger Agreement, Cigna provided Anthem a copy of its Form 8-K at 7:14 a.m. and then filed it at 7:32 a.m., providing Anthem only 18 minutes of early morning notice.

126. After Cigna’s Form 8-K was filed, Anthem immediately contacted Cigna stating: “Anthem has in fact extended the termination date through April 30, 2017, and requests that you promptly file an amended 8-K correcting the record. In addition to being inaccurate, and filed without the required consultation, Cigna’s latest disclosure of its lack of commitment to the merger is harmful.” Anthem had done more than seek to extend, it had done so. Cigna did not respond.

127. That same day, the New York Post reported that it was “expected” that the District Court would block the Merger that week. Josh Kosman, *Judge To*

Block Mega-merger of Anthem and Cigna, N.Y. Post, Jan. 19, 2017. The New York Post also reported that “Cigna is looking to fight any merger extension as it looks to wiggle out of the deal and collect a \$1.85 billion breakup fee from Anthem, according to insiders.” *Id.* The New York Post indicated that it had spoken to Cigna, which appears then to have been the “insider” that spoke to the press in further breach of Section 5.8 of the Merger Agreement. *Id.*

128. On January 25, 2017, Anthem again asked Cigna to provide a response to its requests for assurance that Cigna would abide by the terms of the Merger Agreement going forward. Cigna again ignored Anthem’s request. Instead, on January 31, 2017, the eve of Anthem’s fourth quarter earnings conference call, Cigna sent Anthem yet another SEC Form 8-K that it filed at 6:00 a.m. on February 1, 2017 repeating that it had received “written notice from Anthem seeking to extend” the Termination Date and that “Cigna still intends to evaluate its options in accordance with the Merger Agreement once the Court issues its opinion.” And even though it has no right to terminate, Cigna added that it “has made no determination with respect to Anthem’s notice seeking to extend the termination date, including whether Cigna will seek to terminate the Merger Agreement.” Plainly, Cigna had already determined to wrongfully terminate.

F. Cigna Was Successful In Sabotaging The Merger

129. On February 8, 2017, the District Court issued an order enjoining the Merger. The District Court heavily relied on Cigna’s refusal to defend the Merger, stating that the “elephant in the courtroom” was Cigna’s decision to “actively warn[] against [the Merger]” [REDACTED]

[REDACTED] (Op. at 5, 9, 119)

130. The national media reported that “Cigna sabotaged its own merger” and a “big part of the decision to block the case” was the fact that “Cigna was actively fighting the merger.” Bob Bryan, *‘The Elephant in the Courtroom:’ A Federal Judge Says Cigna Sabotaged Its Own Merger That Would’ve Created Largest U.S. Health Insurer*, Business Insider, Feb. 9, 2017. Indeed, the media reported that the Opinion was a “win” for Cigna because Cigna “convincingly argued” against the Merger and “Cigna’s skepticism – unusual for a party in a merger – strengthened the Department of Justice’s case against the deal.” Curtis Eichelberger & Jeff Bliss, *Comment: Cigna Wins with Federal Court’s Rejection of Anthem Deal*, MLex, Feb. 9, 2017.

G. Anthem Has Appealed The Opinion, As Required; Cigna Has Refused To Do So

131. The Merger Agreement contemplates, indeed requires, an appeal. On February 9, 2017, Anthem issued a press release stating that Anthem would “work aggressively to complete the transaction” and “promptly . . . file a notice of appeal and request an expedited hearing of its appeal to reverse the Court’s decision so that Anthem may move forward with the merger.” The same day, Anthem filed its notice of appeal to the D.C. Circuit. Cigna refused to join Anthem’s press release and refused to file an appeal, as required under the Merger Agreement.

132. On February 13, 2017, Anthem filed an emergency motion for expedited consideration of its appeal to enable the D.C. Circuit to issue a decision on the merits by April 30, 2017. That same day, Anthem also filed its appeal brief addressing the District Court’s errors. Anthem sent Cigna the papers and asked it to join. Cigna refused to do so

133. On the afternoon of February 13, 2017, the D.C. Circuit issued an order directing the DOJ to respond to the emergency motion by noon on Wednesday, February 15, 2017, and directing Anthem to file a reply by noon on Thursday, February 16, 2017.

H. Cigna Has Purported To Terminate The Merger Agreement

134. On February 14, 2017, nearly a month after Anthem extended the Termination Date and the day before the deadline for the DOJ's opposition to Anthem's motion to expedite the appeal, Cigna purported to terminate the Merger Agreement in order to prejudice Anthem's right to appellate review. The same day, Cigna filed a lawsuit against Anthem seeking a declaratory judgment that Cigna's termination of the Merger Agreement was valid. Cigna had spent substantial time preparing a lawsuit, yet concealed its intent to terminate notwithstanding Anthem's repeated requests for assurances that the Merger Agreement was extended.

135. Cigna's termination is invalid because Anthem extended the Merger Agreement through April 30, 2017, yet again supporting the DOJ's efforts to block the Merger. Cigna's new position of a January 31, 2017 Termination Date contradicts its earlier position before the District Court when the Parties and the DOJ were litigating a scheduling order for discovery and trial. The Parties argued for a schedule based on the Termination Date of April 30, 2017, as Anthem unambiguously stated in pleadings to the District Court that it "intends to unilaterally extend the Termination Date to April 30, 2017 but cannot unilaterally extend it any further" because Cigna refused to move the Termination Date past April 30 (further reflecting Cigna's interest in not merging). When the District

Court asked Cigna for its position, Cigna’s counsel stated that “we would agree and defer to the points that Anthem has made” and added that Anthem “believe[s] that *April 30th is a real deadline that Your Honor ought to take into account.* You know, from that perspective, that’s a fair assertion.”

136. The District Court acknowledged that an “underlying assumption” of the schedule is that “we’re marching towards April 30” and asked the Parties to promptly inform the Court in the event the April 30, 2017 assumption changed.⁵ The District Court then entered a scheduling order which would require the proceedings to be concluded by early January 2017, leaving time to pursue appeals, [REDACTED]

[REDACTED] (Op. at 14)

137. Cigna’s termination also is invalid because, even absent extension, Cigna has no right to terminate the Merger Agreement. The right to terminate

⁵ On the next business day following the scheduling hearing, Cigna contacted Judge Levie to seek clarity on Judge Jackson’s comments at the scheduling conference in light of the disputes between Anthem and Cigna and the potential relevance of such disputes on termination and extension rights under the Merger Agreement. Judge Levie responded that he spoke with Judge Jackson, and her comments at the scheduling conference did not express any opinion about the parties’ disputes. Rather, her comments simply reflected her recognition that the parties and the Court would be working hard on this case, and she wanted to be promptly notified if the Agreement was going to be terminated. Cigna never notified Judge Jackson of any intent to terminate before April 30, 2017 and, accordingly, the schedule remained based on the April 30, 2017 Termination Date.

under Section 7.1(b) is not available to “any party that has failed to perform fully its obligations under [the] Agreement in any manner that shall have proximately caused or resulted in the failure of the Merger to have been consummated by” the Termination Date. Cigna has repeatedly breached the Merger Agreement, including by wrongfully terminating it.

COUNT I
**(Declaratory Judgment That Anthem Validly
Extended The Termination Date Through April 30, 2017)**

138. Anthem repeats and realleges the allegations of paragraphs 1 through 137 as if fully set forth herein.

139. The Merger Agreement is a valid, binding, and enforceable contract.

140. Anthem performed or complied in all material respects with its obligations under the Merger Agreement and is prepared to continue to pursue the consummation of the Merger.

141. Section 7.1(b) of the Merger Agreement provides that either Party may unilaterally extend the January 31 Termination Date through April 30, 2017 if all conditions to Closing have been satisfied, or are then capable of being satisfied at Closing, except for required regulatory approvals and the absence of a judicial order preventing the Closing. On January 18, 2017, all such conditions to Closing other than required regulatory approvals and the absence of a judicial order

preventing the Closing had been satisfied, or were capable of being satisfied at Closing.

142. On January 18, 2017, Anthem delivered a notice to Cigna, under Section 7.1(b) of the Merger Agreement, extending the Termination Date through April 30, 2017.

143. On February 14, 2017, Cigna purported to terminate the Merger Agreement.

144. Anthem will suffer imminent and irreparable harm if Cigna wrongly terminates the Merger Agreement. If Cigna terminates, then the Merger will fail, as Anthem cannot close the transaction on its own. Anthem cannot close the Merger without Cigna's assistance in obtaining certain state regulatory approvals including, among others, in California and Connecticut, and filing a Certificate of Merger with the Delaware Secretary of State. Cigna also will not participate in exploring potential settlement opportunities with the new administration. Cigna's cooperation and assistance is also needed in settling the case with the DOJ, including, in order to facilitate any potential divestitures for settlement purposes, by executing customary non-disclosure agreements with potential buyers, setting up data rooms containing necessary due diligence information for any divestitures, and any other necessary actions related to any potential settlement. Moreover, if Cigna wrongfully terminates, then Anthem cannot meaningfully appeal the order

enjoining the Merger. Thus, Cigna's termination will prevent Anthem from closing a \$54.2 billion transformative transaction.

145. An actual justiciable and substantial controversy exists between the Parties regarding Anthem's extension of the Termination Date through April 30, 2017. The controversies are of sufficient immediacy and reality to warrant declaratory relief under Del. Code Ann. Tit 10, § 6501.

146. Anthem seeks a declaration that the Termination Date has been extended through April 30, 2017 under Section 7.1(b) of the Merger Agreement.

COUNT II
(Declaratory Judgment That
Cigna Cannot Terminate The Merger Agreement)

147. Anthem repeats and realleges the allegations of paragraphs 1 through 146 as if fully set forth herein.

148. The Merger Agreement is a valid, binding, and enforceable contract.

149. On February 14, 2017, Cigna provided notice to Anthem purporting wrongfully to terminate the Merger Agreement on February 14, 2017 pursuant to Section 7.1(b).

150. Section 7.1(b) of the Merger Agreement provides that Cigna is not permitted to terminate the Agreement if its failure to perform its obligations under the Agreement "shall have proximately caused or resulted in the failure of the Merger to have been consummated by the Termination Date."

151. Section 5.3 is a material term of the Merger Agreement that obligates Cigna to use its reasonable best efforts to consummate the Merger, including, without limitation, to take, or cause to be taken, all actions, to do, or cause to be done, all things reasonably necessary to satisfy the conditions to Closing and to consummate the Merger including, among other things, to (i) take “any and all actions necessary to avoid each and every impediment under . . . antitrust law,” (ii) facilitate clearance by governmental authorities, (iii) “oppose fully and vigorously” any action or proceeding challenging the Merger, and (iv) “vigorously pursu[e] all available avenues of administrative and judicial appeal.”

152. Cigna breached Section 5.3 of the Agreement by not using its reasonable best efforts, but rather affirmatively acting to sabotage the Merger, as described above, including by:

- (i) obstructing Anthem’s efforts to submit white papers and customer support to the DOJ in defense of the Merger;
- (ii) refusing to provide Anthem with the information necessary to analyze the financial impact of any divestiture proposals;
- (iii) refusing to sign customary non-disclosure agreements and share customary, basic information with potential buyers to allow a settlement with the DOJ through divestitures;
- (iv) failing to assist in Anthem’s efforts to integrate the two companies and, thus, undermining Anthem’s defense at the trial that the Merger creates efficiencies;

- (v) manufacturing a false record of Anthem's alleged breaches of the Merger Agreement to undermine Anthem's defense at trial that the Merger would create efficiencies, and making such record public;
- (vi) failing vigorously to oppose and defend the DOJ Lawsuit, and, instead, affirmatively acting in support of the DOJ's position to block the Merger;
- (vii) refusing to agree to mediation with the DOJ;
- (viii) failing to pursue an appeal of the order enjoining the Merger; and
- (ix) wrongfully purporting to terminate the Agreement.

153. Cigna's breaches of Section 5.3 of the Merger Agreement proximately caused or resulted in the failure of the Merger to be consummated by January 31, 2017. In blocking the Merger, the District Court stated that the "elephant in the courtroom" was Cigna's conduct in "actively warning against [the Merger]," casting doubt on the Merger's benefits, and "inflict[ing] significant damage" on Anthem's "centerpiece" efficiencies defense.

154. Cigna breaches of Section 5.3 of the Merger Agreement also frustrated Anthem's ability to realize the fruits of the Merger Agreement, which also breached the implied covenant of good faith and fair dealing.

155. Anthem will suffer imminent and irreparable harm if Cigna terminates the Merger Agreement. Specifically, if Cigna terminates, Cigna will not participate or assist in Anthem's appeal, even it is required to do so under the Merger Agreement. Cigna also will not participate in exploring potential settlement

opportunities with the new administration. Cigna's cooperation and assistance is also needed in settling the case with the DOJ, including, in order to facilitate any potential divestitures for settlement purposes, by executing customary non-disclosure agreements with potential buyers, setting up data rooms containing necessary due diligence information for any divestitures, and any other necessary actions related to any potential settlement. Anthem also will have no way of consummating the Merger because it needs Cigna's cooperation to obtain state regulatory approvals, including, among others, in California and Connecticut, and to file a Certificate of Merger with the Delaware Secretary of State.

156. Thus, Cigna's wrongful termination will prevent Anthem from closing the \$54.2 billion transformative transaction.

157. In Section 8.12 of the Merger Agreement, Cigna agreed that "irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms" and that the Parties "shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to specific performance of the terms hereof, this being in addition to any other remedy to which they are entitled at law or in equity."

158. An actual justiciable and substantial controversy exists between the Parties regarding Cigna's termination rights under Section 7.1(b) of the

Agreement. The controversy is of sufficient immediacy and reality to warrant declaratory relief under Del. Code Ann. Tit 10, § 6501.

159. Anthem seeks a declaration that Cigna cannot terminate the Merger Agreement because Cigna has failed to perform fully its obligations under the Merger Agreement, proximately causing or resulting in the failure of the Merger to be consummated by January 31, 2017.

COUNT III
(Breach of Contract)

160. Anthem repeats and realleges the allegations of paragraphs 1 through 159 as if fully set forth herein.

161. Cigna's numerous breaches of the Agreement threaten to prevent Anthem from receiving the benefit of the Parties' bargain, which would result in irreparable harm to Anthem and shareholders. Cigna's breaches have also caused Anthem to incur significant out-of-pocket costs, including ongoing legal costs necessitated by Cigna's senior management's refusal to defend the Merger or to participate in discussions regarding a negotiated resolution.

162. Cigna expressly agreed in Section 8.12 of the Merger Agreement to specific performance and that a breach of the Merger Agreement will cause irreparable harm. There is no substitute or replacement for Cigna because Cigna is a unique asset.

163. Anthem is entitled to specific performance by Cigna to use its reasonable best efforts to consummate the Merger, including requiring Cigna to fully cooperate in obtaining all state approvals as quickly as possible, and to cooperate and assist in settling the case with the DOJ, including, in order to facilitate any potential divestitures for settlement purposes, by executing customary non-disclosure agreements with potential buyers, setting up data rooms containing necessary due diligence information for any divestitures, and any other necessary actions related to any potential settlement.

164. Cigna's breaches of the Merger Agreement have also caused Anthem substantial damages, including Anthem's costs associated with the Merger, and will cause further substantial damages if the Merger does not close. Anthem is entitled to damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Anthem respectfully requests judgment and relief against Cigna as follows:

- A. On Count I, declaring that Anthem extended the Termination Date through April 30, 2017 under Section 7.1(b) of the Agreement;
- B. On Count II, declaring that Cigna has no right to terminate the Agreement because Cigna breached its obligations under the Agreement and such breaches proximately caused or resulted in the failure of the Merger;

- C. On Counts I, II, and III, enjoining Cigna from terminating the Agreement or taking any action to prevent or impede regulatory approval and consummation of the Merger;
- D. On Count III, awarding Anthem specific performance of the Merger Agreement by compelling Cigna to use its reasonable best efforts to consummate the Merger, including by fully and vigorously pursuing an appeal of the Order enjoining the transaction entered by the United States District Court for the District of Columbia, cooperating in obtaining all state approvals as quickly as possible, and cooperating and assisting in settling the case with the DOJ, including, in order to facilitate any potential divestitures for settlement purposes, by executing customary non-disclosure agreements with potential buyers, setting up data rooms containing necessary due diligence information for any divestitures, and any other necessary actions related to any potential settlement;
- E. On Count III, awarding Anthem money damages, in an amount to be proven at trial, sufficient to compensate it for all forms of loss, without limitation, actual damages, incidental damages, consequential damages, lost profits, lost goodwill, and other costs and damages it has and will incur by reason of Cigna's breaches of the Merger Agreement;
- F. Awarding Anthem its attorneys' fees, costs and expenses incurred in connection with this litigation; and
- G. Granting such other, further and different relief as the Court may deem just and proper together with the costs and expenses for this action.

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February 14, 2017

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2017, the foregoing was caused to be served upon the following counsel of record via File & ServeXpress:

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