IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CIGNA CORPORATION, Plaintiff, v. ANTHEM, INC. and ANTHEM MERGER SUB CORP., Defendants.	))))))))))	C.A. No. 2017-0109-JTL **PUBLIC VERSION FILED:** February 17, 2017

VERIFIED COMPLAINT

Introduction

1. This is a case arising under a merger agreement between two leading health insurance companies, plaintiff Cigna Corporation and defendant Anthem, Inc., pursuant to which Anthem intended to acquire its innovative competitor Cigna. The parties knew from the outset that this combination of large competitors would draw regulatory scrutiny, and Cigna only entered into the contract upon Anthem's loud assurances that regulatory approval could be readily obtained without jeopardizing either party's business. Anthem bargained for the contractual responsibility to lead the regulatory process, and the merger agreement obligated Anthem to pay Cigna a $1.85 billion reverse termination fee if regulators failed to clear the transaction. The $1.85 billion fee is guaranteed if the transaction is blocked on regulatory grounds: that was the bargained-for minimum payment due Cigna if Anthem could not deliver on its obligation to secure regulatory approval.

The merger agreement also permits Cigna to recover additional amounts in the event Anthem otherwise breaches its contractual obligations.

2. The transaction has now failed to receive regulatory approval. The U.S. Department of Justice and eleven states sued to block the deal, citing its anticompetitive effects, and a federal district judge permanently enjoined the merger in a 140-page post-trial opinion finding that the "proposed combination is likely to have a substantial effect on competition in what is already a highly concentrated market." After more than eighteen months of limbo, the deal is dead. This is precisely the scenario anticipated by the reverse termination fee provision of the merger agreement. Anthem is therefore obligated to pay Cigna $1.85 billion.

3. What Cigna did not anticipate is that Anthem would put its own interests ahead of its contractual obligations and act with the intent to harm Cigna's business. This conduct constitutes a willful breach that gives rise to damages beyond the guaranteed $1.85 billion termination fee. The evidence of such breach is overwhelming.

4. When the parties signed the merger agreement, they discussed and conveyed to the market a clear vision for the combined company: it would bring together the complementary strengths of both Cigna and Anthem to create a leading healthcare company that would expand the choices available to consumers

and deliver greater value. Cigna has been an innovative company, pioneering, among other things, "value-based" care arrangements, in which providers are paid not just for seeing more patients and performing more procedures, but also for improving outcomes—a goal that benefits both Cigna's members and the employers who fund their health coverage. As Anthem's CEO, Joseph Swedish, testified to Congress shortly after the deal was announced, Cigna's "distinctive strengths" have yielded "results [that] speak for themselves."

5. Anthem, by contrast, is a traditional health insurer. As the largest member of the Blue Cross Blue Shield Association (the "Blues"), an association of insurance companies that hold exclusive licenses to use the venerable Blue Cross and Blue Shield brands, Anthem negotiates large discounts off the reimbursements it pays to healthcare providers and uses those lower rates to attract business.

6. Combining Cigna's innovation with Anthem's lower rates would create a company offering the best products in the market at competitive prices. The combination would be an important step in generating value for the nation's healthcare system, leveraging the power of the companies' complementary platforms to drive the transformation toward value-based care. This model was key not only to the success of the combined company, but also to convincing regulators to approve the merger of two of the nation's four largest health insurers.

7. Also of critical importance to achieving regulatory approval was resolving the unique issues posed by Anthem's Blues membership. The Blues work together in various ways to gain a competitive advantage over non-Blue insurers, imposing restrictive rules on the association's members to ensure that they actively promote the "Blue" brand. This coordination creates significant antitrust risk in its own right—Anthem and the other Blues are already subject to a federal antitrust class action—and a merger that expanded the Blues' market power would only exacerbate these concerns. Anthem's obligation to lead the regulatory process required it to develop a plan for resolving these impediments to the transaction. Anthem told both Cigna and the market that it could do so, with Mr. Swedish publicly declaring that the Blues issues were "fully vetted" and that Anthem had "resoundingly concluded" that they could be overcome.

8. But Anthem's incentive to remain loyal to the Blues was strong, as it faced a penalty of nearly $3 billion if the other Blues determined that it was no longer in compliance with the association's rules. Tellingly, Mr. Swedish admitted to the DOJ in testimony, contrary to his earlier public statements, that he did not know how his company could square its loyalty to the Blues with the Cigna deal. After the merger was signed, Anthem developed no plan for resolving the Blues issues. Instead, Anthem pursued a strategy that favored the interests of the Blues (itself included) at the expense of complying with its contractual obligation to

facilitate the consummation of the Cigna merger. Among other things, Anthem unveiled what it called a "bias to Blue" strategy: rather than promoting consumer choice and fostering the Cigna brand as a competitor to the Blues, Anthem would seek to herd Cigna customers under the Blue umbrella. This was a recipe for regulatory failure. The DOJ seized on Anthem's bias-to-Blue strategy as powerful evidence of the anticompetitive effects of the proposed merger.

9. As Anthem failed to implement any strategy that could have obtained regulatory approval, completing the Cigna merger became secondary to Anthem's goal of leveraging the pendency of the merger agreement to benefit itself and the other Blues while undermining Cigna as a competitor—breaches that were willful in every sense. Thus, although the merger agreement assigned Anthem responsibility to manage the antitrust approval process, Anthem did next to nothing to engage with the DOJ or anticipate its inevitable objections. Cigna repeatedly urged Anthem to develop such a strategy, identifying key areas—including the need to devise a coherent plan for divestitures—that were plainly necessary to earn regulatory approval. But Anthem ignored Cigna's input, proceeding down a unilateral path with no realistic prospect of getting the deal approved, and which collapsed when the DOJ began to raise some of the very issues that Cigna had flagged.

10. Throughout the eighteen-month pendency of the merger agreement, Anthem also consistently acted to diminish Cigna's competitive threat and strengthen its ever-expanding Blues network. Among other examples of Anthem acting intentionally to harm Cigna, Anthem misappropriated Cigna's confidential information; touted to the market that it would copy innovative components of Cigna's business if the deal did not close; unilaterally and in violation of the merger agreement contacted Cigna's customers; and used discovery as a pretense to harass Cigna's customers. Anthem also adopted a "secret" integration team designed to cut Cigna out of merger planning and to ensure that the post-merger company, if there ever was one, would faithfully execute the "bias to Blue" strategy. Anthem further sought to damage Cigna's standing in the market by eliciting false and disparaging testimony about Cigna at trial, then used these misstatements in the marketplace to try to win business away from Cigna. This conduct undermined the deal, as Anthem's false testimony necessarily clashed with the truthful testimony of Cigna's witnesses and the documentary record, while making it impossible for Cigna to stand behind Anthem's misleading and damaging positions.

11. Anthem's failures culminated in the district court's opinion enjoining the transaction. That opinion makes clear that, instead of relying on a sound legal strategy supported by the facts, Anthem "ask[ed] the Court to go beyond what any

court ha[d] done before"; offered economic theories that [REDACTED] to what Anthem executives themselves testified; and was undercut time and time again by Anthem's own business records [REDACTED]

[REDACTED] The district court also seized on Anthem's conduct designed to favor the Blues, finding that its plan to "rebrand" Cigna customers—which Anthem made the centerpiece of its defense—did not improve the competitive impact of the transaction at all. As the court concluded, Anthem was unable to "demonstrate that its plan [was] achievable or that it [would] benefit consumers as advertised."

12. With the merger enjoined and the January 31, 2017 termination date of the merger agreement now passed, Anthem's destructive conduct must come to an end. Anthem has no right to extend the termination date because it is in material breach of its contractual obligations. Any extension, which cannot go past April 30 under the merger agreement, would also be futile: the federal injunction against the deal would alone take months or more to appeal, with no viable prospect of success, and additional proceedings would likely then be needed in the district court to clear the transaction. Numerous other regulatory hurdles remain on the state and international levels, which Anthem has admitted would alone take at least four months even after a *favorable* federal ruling. Yet Anthem has informed Cigna that it wants to extend the termination date to pursue an appeal and

has stated in a court filing that it "disputes that Cigna has a right to terminate at all"—ever—even *after* the purportedly extended termination date.

13. Cigna therefore needs this Court's intervention. The merger agreement should be declared terminated and Anthem should be ordered to pay the $1.85 billion reverse termination fee and further damages, including over $13 billion of lost premium value to Cigna's stockholders, caused by Anthem's willful breaches.

Parties

14. Cigna is a Delaware corporation with its principal executive offices in Bloomfield, Connecticut. Cigna is a global healthcare services company and one of the nation's largest health insurance carriers. For years, Cigna has been a key driver of innovation in the healthcare market. In addition to its groundbreaking work in value-based care, Cigna has leading consumer-centric technology platforms and highly regarded behavioral, pharmacy, vision, dental, and other specialty offerings. Cigna has a broad geographic presence, with 15 million global medical customers located throughout the United States and Canada, Europe, the Middle East, and Asia. Cigna's reputation as an innovator, as well as its leading client service and collaborative approach, has positioned the company as one of the strongest competitors in the industry, on a trajectory for long-term growth. The company generated $38 billion in revenue in 2015 and has seen growth in both

revenue and earnings per share at a compound annual growth rate of 13% over the last seven years—far outstripping its peer companies in these growth metrics.

15. Anthem is an Indiana corporation with its principal executive offices in Indianapolis. It is the nation's second-largest health insurance company, with 38 million members. Anthem has an exclusive license to sell under a "Blue" brand in fourteen states; it obtains significant market share in these states and uses its power to negotiate steep discounts off the reimbursements it pays to health providers. Anthem has been less successful in developing the types of innovative programs that have driven Cigna's growth. Anthem also lacks the specialty products and international presence that are important components of Cigna's business. Given its more traditional approach, Anthem does not have the growth prospects as a standalone company that Cigna has.

16. Anthem Merger Sub Corp. ("Merger Sub") is a Delaware corporation and a direct and wholly owned subsidiary of Anthem. Merger Sub is a party to the merger agreement, pursuant to which Merger Sub was intended to merge with and into Cigna in accordance with Delaware law.

Jurisdiction, Venue, and Governing Law

17. This Court has subject matter jurisdiction pursuant to 8 *Del. C.* § 111(a)(6). Under Section 8.11 of the merger agreement, Anthem and Cigna expressly agreed that (i) "any legal action or proceeding with respect to this

Agreement . . . shall be brought and determined exclusively in the Delaware Court of Chancery" and (ii) they would "irrevocably consent[] to the jurisdiction and venue in the Delaware Court of Chancery."

18. Under Section 8.6(a) of the merger agreement, the agreement is governed by, and must be construed in accordance with, Delaware law.

Background

A. The parties negotiate a transaction and identify key regulatory hurdles.

19. Beginning in May 2014, Anthem and Cigna engaged in discussions concerning a potential business combination. From the outset, regulatory obstacles, particularly those relating to Anthem's Blues membership, were a focus for Cigna as it considered the possibility of a transaction with Anthem. Among other things, Cigna pressed Anthem to explain how the combined company could meet the Blues' "best efforts" rules, which require Anthem to derive at least two-thirds of its healthcare revenue across the country from its Blue-branded business. These preliminary discussions ended in February 2015 due to Anthem's view of the Blues issues, as well as its need to focus on a recent data-security breach.

20. Anthem reengaged Cigna in mid-2015. Anthem made four unsuccessful bids for Cigna in June 2015 alone, eventually sending a public "bear hug" letter on June 21, 2015. In response to Anthem's overtures, Cigna pushed to get more value for its stockholders while again raising questions about the Blues-

related issues. Although Cigna conducted its own thorough diligence on the Blues rules, Cigna was largely reliant on Anthem—as the party that was a member of the Blues—to provide complete and accurate information that was within Anthem's exclusive control. Anthem repeatedly assured Cigna that the Blues issues could be solved. In fact, Anthem represented in the course of negotiations that there was a clear path to ensuring that the combined company would be compliant with the Blues rules: either the antitrust litigation against the Blues would relax the constrictive best efforts rules, or Anthem, as the largest member of the Blues, would aggressively petition and push back on the Blues to make sure that the rules were changed to accommodate the merger.

21. During this time, Anthem's CEO, Joseph Swedish, made bullish statements to the market attempting to minimize any concerns about Blues issues. He told the *Wall Street Journal*, for example, that the Blues requirements would not stand in the way of regulatory clearance and that he was "optimistic" that "we will meet the test and be in full compliance with the rules." Mr. Swedish also told the market that the Blues issues were "fully vetted" and represented to Cigna, including in a letter to Cigna's board, that Anthem's board, senior management team, and advisors had "resoundingly concluded" that the Blues rules would not interfere with the proposed merger.

22. Following Cigna's due diligence and additional negotiations, including an increase in the price that Anthem was offering—to a combination of cash and stock worth about $188 per Cigna share, representing a 38% premium—the Cigna board determined to accept the improved offer, and the parties entered into a merger agreement on July 23, 2015.

B. The merger agreement gives Anthem control over the regulatory process and puts the risk of regulatory failure on Anthem.

23. As the acquiring company, Anthem bargained in the merger agreement to take the lead in the regulatory process. Section 5.3(e) of the merger agreement (attached hereto as Exhibit A) specifies that Anthem "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." Section 5.3 of the merger agreement further requires Anthem to use "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" and "to avoid each and every impediment" to the transaction under applicable law, including obtaining necessary regulatory consents and opposing any objections or litigation by the government.

24. Anthem's contractual duty to lead the regulatory process, however, must be carried out "in consultation with Cigna." Merger Agreement § 5.3(e). This obligation to consult applies to developing regulatory strategy, to

communications with any governmental entity, and to making regulatory filings and meeting with the government.

25. Anthem's successful performance of its regulatory obligations is necessary to complete the merger. Under the express terms of the merger agreement, closing cannot occur if there are any "Legal Restraints" in place (*e.g.*, any judicial order enjoining the merger) or if any government action seeking to block the merger remains pending. *Id.* § 6.1(a). In addition, all "Necessary Consents" must be obtained. *Id.* § 6.1(b). These Necessary Consents include approvals by 26 state departments of insurance who, under applicable state law, must approve the merger.

26. Closing is also explicitly conditioned on Anthem's compliance with all of its covenants and agreements under the merger agreement. Section 6.3(b) of the merger agreement provides that Cigna's obligation to effect the merger is subject to the condition that "Anthem and Merger Sub shall have performed or complied in all material respects with all agreements and covenants required to be performed by them under this Agreement at or prior to the Closing Date."

27. Section 7.1(b) of the merger agreement provides that the merger agreement may be terminated "[b]y either Anthem or Cigna, if the Merger shall not have been consummated on or before January 31, 2017 (the 'Termination Date')."

28. The Termination Date may be extended by no more than three months, to April 30, 2017, only if all conditions to Closing other than regulatory approval are satisfied:

> if all of the conditions to Closing shall have been satisfied or shall be then capable of being satisfied, other than the conditions set forth in Section 6.1(a) ["No Injunction or Restraints; Illegality"] (but only if the applicable Legal Restraint constitutes a Regulatory Restraint) and Section 6.1(b) ["Government Consents"], the Termination Date may be extended by Anthem or Cigna, by written notice to the other party, to a date not later than April 30, 2017.

Id. § 7.1(b). As noted, Anthem's compliance in all material respects with its covenants under the merger agreement is a condition to closing. *Id.* § 6.3(b). If that condition under Section 6.3(b) is not satisfied because Anthem is in material breach of any covenant, it is not true that all of the conditions to closing other than those in Sections 6.1(a) and 6.1(b) are satisfied, and extension of the Termination Date is not available under the express terms of the merger agreement.

29. In the event the transaction fails to be consummated by the Termination Date due to the failure to obtain regulatory approval, Anthem is obligated to pay Cigna a $1.85 billion Reverse Termination Fee by the second business day following termination of the merger agreement. *Id.* § 7.3(e). The Reverse Termination Fee can also become payable before the Termination Date if a regulatory restraint on closing becomes final and non-appealable. *Id.*

30. Cigna is not required to show any breach by Anthem to be entitled to the Reverse Termination Fee. To the contrary, Anthem can deprive Cigna of the Reverse Termination Fee (in relevant part) only if the failure of the regulatory conditions to be satisfied was "caused by Cigna's Willful Breach of Section 5.3," which section contains Cigna's obligation to use reasonable best efforts. *Id.* The merger agreement defines a "Willful Breach" as a "material breach" by a party with "actual knowledge" that its act or omission would constitute a material breach of the merger agreement. *Id.* § 8.13.

31. Although the $1.85 billion Reverse Termination Fee is payable without regard to whether Anthem has breached the merger agreement, if Anthem has "Willfully Breached" the agreement, Cigna is entitled to additional damages over and above the Reverse Termination Fee. *Id.* §§ 7.2, 7.3(e), 8.5(b)(iii).

32. The merger agreement thus places on Anthem not only the obligation to lead the process of seeking regulatory approval, in consultation with Cigna, but also the risk—carrying an obligation to pay at least $1.85 billion to Cigna—that Anthem will fail to obtain such approval within the contractually specified timeframe and thus cannot consummate the transaction.

C. Anthem commits numerous breaches of its contractual obligations.

33. At the time the merger agreement was signed, Anthem led Cigna to believe that it would pursue a regulatory strategy that would highlight the pro-

competitive features of the transaction. In particular, leveraging the parties' complementary strengths—including Cigna's innovative, collaborative approach and Anthem's leading provider discounts—would drive value for consumers, create a leader in the evolving healthcare market, and expand consumer choice. As Anthem touted to the market at the time, the transaction would "combine[] two companies with complementary consumer solutions and a differentiated mix of products and services that will enhance our combined ability to lead change in the healthcare experience as a trusted partner for consumers." Likewise, in the companies' joint proxy statement, Anthem asserted that the combination "could yield immediate value through the realization of synergies and expand consumer choice." And in other public statements, Mr. Swedish repeatedly stressed the benefits of the companies' "complementary platforms," praised Cigna's "strengths," including its "highly regarded wellness programs and strong client reporting capabilities," and affirmed that the Cigna brand would be used "as a competitive element against all payers" in the marketplace.

34. Critically, Cigna believed that if Anthem adhered to this strategy, the transaction *could* obtain regulatory approval. After the merger agreement was signed, however, Anthem failed to execute this strategy. While Anthem had told the market that it was "confident in [its] ability to obtain regulatory approval" because the companies' strengths were "highly complementary" and would

"provide greater choice" for consumers, Anthem set out on a course directly opposed to this deal rationale. Anthem sought to protect its own interests above all else, building a bigger more powerful version of itself and strengthening the Blues network while eliminating Cigna as a competitor. Anthem's willful and malicious conduct was evidenced in numerous ways, as set forth below.

(i) Anthem fails to develop any coherent regulatory strategy.

35. Despite having the contractual obligation to lead the regulatory approval process, Anthem repeatedly refused to develop a strategy for moving the deal through that complex process. After the deal was signed, Anthem elected not to engage at all with the substantive regulatory issues the transaction faced. Other than a preliminary meeting in early September 2015, the one substantive meeting Anthem had with the DOJ in 2015 took place only because the government issued Anthem a deposition notice and raised concerns about the Blues rules—concerns that Anthem had done nothing to address proactively.

36. Despite Anthem's failures, Cigna did its part to support regulatory approval. Cigna diligently responded to the DOJ's information requests, expending massive resources and submitting its response to the government's second request before Anthem did. Cigna also took affirmative steps to clear the path towards regulatory approval, including successfully soliciting customer

support letters and a favorable op-ed in *The Hill* authored by a prominent physician. Anthem took no such affirmative steps to Cigna's knowledge.

37. Cigna also pressed Anthem to address regulatory issues. For example, Cigna provided Anthem with input on the legal challenges that Anthem would need to address, including Blues-related issues and national market antitrust theories (*i.e.*, that there is a nationwide market for the sale of insurance to large employers). Cigna also urged from the outset that Anthem would need to come up with a strategy in the event that the DOJ required divestitures as a condition to approving the deal. Anthem met Cigna's efforts with resistance and refused to take Cigna's views into account. Indeed, Anthem chose instead to ignore the problems the deal may face: before Anthem had done anything to even discern the government's position, Anthem's CEO told the press that Anthem was "not expecting divestitures" and that Anthem had not made a divestiture proposal to the DOJ.

38. A February 16, 2016 meeting between the Cigna directors who would continue on the board of the combined company and the Anthem board was emblematic of Anthem's utter failure to follow through on its contractual responsibility to lead the regulatory process, even in the face of constructive input from Cigna. At the meeting, Cigna highlighted the numerous issues at play—chief among these, the DOJ's concerns about the Blues and the need to develop a

divestiture strategy. Anthem's directors and top executives, including its CEO and General Counsel, heard Cigna's message but failed to do anything to implement that advice.

39. When Anthem was finally forced to tackle the regulatory hurdles in the face of the government's coming attack on the deal, it still decided to forego meaningful engagement with the DOJ. Despite Cigna's urging to do so, Anthem did not attempt to have meetings with the government and present the parties' affirmative case. Instead, Anthem decided to make written white papers the centerpiece of its advocacy efforts, but then failed to approach them with any sense of urgency or discipline. Anthem would commit to provide papers to the DOJ on certain dates, then blow through those deadlines with no valid excuse. At one point when it became clear that Anthem would not even have all of the papers done before a key meeting with the government, Anthem's General Counsel dismissively said that they would have been "nice to have."

40. Although Anthem's white paper drafts were regularly delayed, missing key arguments, and in some cases in conflict with one another, Cigna remained fully engaged in providing constructive feedback. But Anthem refused to address many of the concerns Cigna raised on particular issues, instead insisting that it alone was managing the regulatory strategy. Anthem was unwilling to vet or even share with Cigna the regulatory arguments that it planned to pursue or explain

how it intended to address fundamental issues that were holding up regulatory approval, such as the Blues rules and a remediation strategy. Ultimately, Cigna was never given the whole picture—or even a meaningful slice—of what Anthem's regulatory strategy was.

41. Anthem also committed other breaches of its obligation to consult with Cigna throughout the regulatory process. Among other things, it unilaterally pursued meetings with multiple governmental entities, including the Virginia Bureau of Insurance, and proceeded to attend these meetings with minimal, if any, notice to Cigna and no coordination about the substance of what would be discussed. Anthem also failed to provide Cigna with notice when it unilaterally chose to place misguided advertisements in national publications maligning the DOJ after it filed litigation.

42. All the while, Anthem continued to insist to Cigna and the market that it had the regulatory strategy under control. But the reality of the situation could not have been more stark: Anthem in fact had *no* viable regulatory strategy to offer. It had failed to develop arguments that were reasonably likely to succeed under the antitrust laws; failed to develop any proof points to demonstrate the pro-competitive nature of the transaction; failed to garner any third-party support for the transaction; refused to meaningfully engage with the DOJ; and failed to develop a remediation strategy altogether.

(ii) Anthem attempts to undercut Cigna's role and develops a secret integration team to exclude Cigna from the process.

43. As Anthem ignored all input from Cigna in the regulatory process, it also worked to undermine Cigna's role in the transaction more broadly. This behavior demonstrated that Anthem's failures to lead the regulatory process were intentional and malicious.

44. On December 29, 2015, only days after a conversation with Cigna's CEO, David Cordani, in which no issues or concerns were raised, Mr. Swedish took the highly unusual step of sending an adversarial letter to Cigna, marking the start of a year-long attempt to create a false record impugning Cigna's efforts in support of the deal. Mr. Swedish followed up with a second letter that same week, making clear his intent to unilaterally impose a governance structure that would limit Cigna's involvement in the combined company. In response, the Chairman of Cigna's board conveyed that the contracted-for governance structure was a fundamental premise on which the board had agreed to the deal, as integrating Cigna's leadership was critical to leveraging Cigna's innovations to deliver synergies for the combined company and generate value for stockholders. Indeed, during the negotiations over the merger, Cigna's board pushed for its stockholders to get more of their consideration in stock precisely on this basis.

45. Anthem continued to impose its unilateral decision-making on Cigna in every way it could. This heavy-handed approach was made explicit in the

integration process. Section 5.10 of the merger agreement specifically required the parties to establish an Integration Committee "to ensure the successful combination of the operations of Anthem and Cigna after the Closing." Consistent with the clear import of this provision, Cigna sought to have a collaborative role in the process. Mr. Swedish, however, declared that he alone would make all final decisions about integration. Anthem then delegated control of most integration matters, including the key work on identifying synergies, to McKinsey, a consultant that Anthem unilaterally retained. Even worse, Anthem put together a team that was unequipped for the task: the head of McKinsey's team had limited M&A experience, having previously only worked on one merger that had gone to closing, and Anthem's own business integration leader had no experience overseeing an integration at all.

46. Anthem's control over the integration process also put it in a position to harm Cigna in the marketplace by misappropriating and failing to protect its confidential information. Cigna continuously pushed Anthem to put robust security protections in place during the integration process. Anthem ignored or resisted all efforts by Cigna to correct these problems, instead pushing for more lax rules that made it easier for Anthem to take advantage of the confidential information Cigna had shared in the integration process. For example, Anthem announced a new Facility Reimbursement Policy in September 2016 that appeared

to have been directly modeled on Cigna's pre-existing claims-editing system and was only made possible through confidential information Cigna had shared to facilitate integration.

47. The extent of Anthem's abuse of the integration process did not become fully apparent until trial in the DOJ litigation in late November 2016, when Mr. Swedish admitted in open court that Anthem's executive leadership, on Mr. Swedish's orders, had assembled a separate, secret Anthem-only integration team designed specifically to exclude Cigna from the integration process.

48. Despite Anthem's repeated attempts to cut Cigna out of the process, Cigna continued to fully comply with its contractual obligations and tried to guide the integration process in the most productive direction. In April 2016, Cigna informed Anthem that the best use of the parties' resources was to focus on the combined company's Day 1 go-to-market strategy, which was a more pressing matter than the cost-cutting efforts with which Anthem had become obsessed. Cigna also continued work to support the regulatory process. As Anthem admitted in its own post-trial findings of fact in the DOJ litigation, Cigna participated in and "worked extensively" on integration efforts, participating in "over 1,000 joint meetings" of the integration teams and devoting hundreds of employees to the integration process.

49. Anthem has repeatedly acknowledged in public statements that Cigna was a cooperative partner, while concealing the extent of the dysfunction on Anthem's side. At a May 2016 investor conference, for example, Anthem's General Counsel, Thomas Zielinski, stated that working with Cigna on the transaction "had been a very collaborative process and maybe more so than other transactions I have been involved with." Mr. Swedish further declared that "the teams are working very, very well together" and that "we have been very collaborative." Anthem apparently never wavered in its view that Cigna was a positive force in the process: In late November 2016, Mr. Swedish testified in open court that the parties had "work[ed] very well together" and that any perceived conflict was just "noise" that had not impacted Anthem's ability to move forward with its integration plans. He further testified that it was "inspirational" how well the Cigna and Anthem teams had worked together.

(iii) Anthem develops the "bias to Blue" plan and puts its self-interest and allegiance to the Blues ahead of the deal.

50. Anthem had an affirmative obligation under the merger agreement to seek solutions to the Blues-related impediments to the deal. However, by seizing unilateral control of the integration process, Anthem put itself in a position to use the transaction to strengthen itself and the Blues.

51. After Anthem's board and senior executives worked in negotiations with Cigna to downplay the risk posed by the Blues rules, as well the extent of

their allegiance to the Blues more broadly, Anthem's post-signing conduct revealed a different story. In its transaction announcement, Anthem committed to remaining "Blue." Anthem then held multiple private meetings with its fellow Blue insurers, going out of its way to conceal these meetings from Cigna. Only later did Mr. Swedish acknowledge—when he was forced to in open court—that he held one-on-one meetings with key Blue executives for months after the deal was announced, including a secret meeting at the Peninsula Hotel in Chicago. During this time, Anthem refused to give Cigna any information at all on what its plans were for complying with the Blues best efforts rules after the merger.

52. As it met in secret with its fellow Blues, Anthem also developed plans that would favor the Blues while harming the chances of regulatory approval for the merger with Cigna. The "bias to Blue" plan was a stark example. Contrary to the strategy of defending the deal on the ground that it would expand consumer choice and that Cigna's offerings would increase, the "bias to Blue" plan would have the opposite effect. Under this strategy, which Anthem announced it would adopt at a June 9, 2016 meeting of the Steering Committee tasked with overseeing the integration process, Anthem would push Cigna customers towards the Blue platform by withholding the additional discounts that the combined company expected to negotiate with healthcare providers unless customers made the transition over to Anthem, *i.e.*, to Blue. Anthem also advocated for "forced

migrations" from Cigna to Anthem. Even while the deal remained pending, the Anthem sales team went so far as to tell potential customers that they should switch to Anthem then, as they would likely be rebranded post-merger anyway.

53. The extent of Anthem's intent to undermine the Cigna brand became even clearer at trial. Anthem's Vice President of Corporate Development, Stephen Schlegel, admitted that, contrary to Mr. Swedish's earlier public reassurances, Anthem was calculating that the merger would push the combined company out of compliance with the Blues rules. It would be up to the other Blue plans to determine whether Anthem had fixed the problem to their satisfaction, and they had the power to assess a $3 billion penalty and strip Anthem of its Blues license. This would be uncharted territory: no Blue had ever gone out of compliance before. Anthem thus had to adopt an even more aggressive rebranding plan than it had revealed in "bias to Blue." In Mr. Schlegel's words, Anthem would do everything it could to "take revenue from the Cigna side . . . and bring it over to the Blue Cross side."

54. Anthem's coercive rebranding tactics were the complete opposite of the consumer-choice rationale that was supposed to be key to the regulatory strategy, and they became a lightning rod for the DOJ. Among other things, Anthem became increasingly dependent on arguing that efficiencies would be generated by applying Anthem's deeper provider discounts to Cigna customers.

But this argument played directly into one of the government's key arguments: that the combined company would use anticompetitive market power to drive down the reimbursement rates it pays to providers for their services.

55. Anthem also attempted to downplay to the court—just as it had with Cigna—the level of cooperation among the Blues. Throughout the trial, Anthem characterized the Blues as a mere "rental network arrangement" that gave its customers access to insurance coverage outside of Anthem's fourteen states. But a mountain of documents showed to the contrary: that there is deep coordination among the Blues in competing for customers, especially national accounts. This evidence only grew as the regulatory process went on. Documents unsealed in the pending antitrust multi-district litigation ("MDL") against Anthem and the other Blues revealed a troubling picture of the Blues as a unified block, which did not meaningfully compete against each other. These unsealed documents also shed light on how the Blues worked together to win national accounts through Consortium Health Plans, a coalition of Blues plans of which Anthem is a member and part owner. Anthem neither informed Cigna of the underlying facts surrounding its coordinated action with its "Blues brethren," nor did it seek to consult with Cigna on how to mitigate the damage from these documents.

56. The pendency of the Blues MDL undercut Anthem's defense of the transaction in other ways. Shortly after the merger was announced, counsel for the

plaintiffs in the MDL wrote a letter to the DOJ urging it to focus on two arguments that would ultimately become centerpieces of the government's case: (i) that the Blues "best efforts" rule, requiring Anthem to generate two-thirds of its business under a Blue brand, would limit Anthem's ability to grow the Cigna brand, and (ii) that Anthem competes for business with other insurers, including Cigna, not just in local geographic markets, but also for large "national accounts." The MDL plaintiffs also made it known to Anthem that they would be closely watching the merger case, sending document requests about the merger to both Anthem and Cigna. The threat of prejudicing its position in the Blues MDL may have impacted Anthem's defense of the merger, for example giving Anthem an incentive to try to downplay the importance of the Blues best efforts rules, which were at the forefront of the antitrust claims in the MDL.

57. Anthem's Blues-driven motivations also dictated its misguided approach to divestitures. After many months of failing to engage with the government at all, when Anthem finally threw together a purported remedial plan—only after senior DOJ staff expressed serious concerns about the deal in June 2016—it settled on a strategy that was not only completely unworkable, but designed to disproportionately harm Cigna and its ongoing competitiveness while strengthening the Blues. Anthem insisted that Cigna alone divest assets, while refusing to take customary steps such as hiring an investment banker that would be

necessary to identify qualified bidders. Then, despite DOJ's repeated and voiced concerns regarding the Blues organization and rules, including the Blues' competing as one for national accounts, Anthem demanded that Cigna share its competitively sensitive information with two Blues that Anthem had identified. Anthem failed to acknowledge Cigna's serious information-protection concerns. Indeed, even *after* the DOJ indicated to the parties that divestiture to Anthem's fellow Blues would be a non-starter—telling the parties that "divestiture to a Blue plan is not a path forward"—Anthem continued to demand that Cigna share its competitive information with Blue insurers.

58. Given Anthem's misguided priorities, the DOJ publicly announced that Anthem's proposed fix was intrinsically flawed on the merits and that Anthem's proposed buyers were inadequate. Indeed, Anthem so mismanaged this effort that it killed any prospect of discussing a resolution with the DOJ at any time throughout the litigation. Although Anthem would occasionally thereafter try to push for mediation, the government refused at every turn.

59. There is no innocent explanation for Anthem's position that it could somehow resolve the DOJ's concerns around national accounts by divesting to a Blue. As it realized that it had severely harmed the prospects of getting the merger closed, Anthem had turned its efforts to harming Cigna and helping its fellow Blues.

(iv) Anthem further undermines the deal by commencing a self-interested litigation against its pharmacy benefits manager.

60. Anthem allowed the pursuit of its self-interest to interfere with the transaction in ways that went beyond the Blues issues. Anthem's misguided lawsuit against its pharmacy benefits manager ("PBM")—one of the most important relationships for any health insurer—was another glaring example of such conduct.

61. In its bid for Cigna, Anthem stressed the importance of synergies relating to the combination of the companies' PBM operations. In a June 20, 2015 press release, Anthem stated: "We believe there are substantial and achievable synergy opportunities, including operating efficiencies, as we leverage our respective core competencies as well as PBM savings from our combined scale."

62. Anthem repeatedly touted the significant value and opportunity the merged firms' customers would gain from PBM efficiencies. As Anthem's CFO stated on a June 22, 2015 investor call, "The synergy is the combination of the 2 PBMs coming together and what can that incremental value actually drive for the combined organization that neither of us could get individually." Indeed, a third-party consultant the parties jointly retained had conducted a market analysis and calculated PBM cost savings of nearly $15 billion over five years.

63. Nonetheless, Anthem commenced a breach of contract suit against its PBM provider, Express Scripts, on March 21, 2016 in the midst of the parties'

regulatory review, claiming $15 billion in damages. Anthem did so without any consultation of Cigna, even though launching such litigation threatened to raise a host of issues that could impact the regulatory review process and the savings expected to be achieved by the combined company.

64. Soon after filing the litigation, Anthem informed Cigna that it would not be including PBM synergies in its submissions to the DOJ. This was a complete reversal of course, and it undermined the prospects of regulatory approval by eliminating a significant, sustainable and innovative synergy that would benefit health care customers and value-based health care providers.

65. The Express Scripts litigation also put on vivid display Anthem's mishandling of Cigna's confidential information. For the integration, Anthem had access to highly confidential information relating to Cigna's PBM pricing. Anthem's allegations against Express Scripts indicating that "market analysis" had revealed the terms in the Anthem/Express Scripts PBM agreement to not be competitive raised the distinct possibility that Anthem had misappropriated for its own purposes Cigna's confidential pricing information.

66. Anthem's handling of the Express Scripts situation was further glaring evidence that Anthem was motivated, first and foremost, to act for its own benefit, even when doing so would undermine the prospects of obtaining approval for the transaction.

(v) Anthem intensifies its efforts to harm Cigna after the government files suit.

67. Anthem's self-interested conduct and mishandling of the regulatory process destroyed any prospect of convincing the government to approve the transaction. On July 21, 2016, the DOJ, 11 states and the District of Columbia filed suit to block the Anthem-Cigna merger. As the prospects of regulatory approval grew even more dim, and Anthem realized that it would still have to deal with Cigna as an independent competitor, Anthem sharpened its focus on harming Cigna's prospects as a standalone competitor.

68. After the litigation was filed, Anthem's sales representatives contacted Cigna customers to solicit their business. These solicitations appeared to misappropriate customer information Anthem obtained from Cigna during the integration process, in direct violation of the parties' confidentiality agreement and Section 5.3 of the merger agreement. Anthem also undertook unilateral outreach to Cigna's customers about the merger without any notice to Cigna and used the third-party subpoena process as a pretext for harassing Cigna's customers. This pattern of behavior confirmed that Anthem was now using the merger to disrupt Cigna's relationship with its customers. A buyer actually expecting to close the transaction would seek to preserve, not damage, these relationships. But as Anthem saw the writing on the wall that its strategy could not get the merger

approved, and that it would need to continue competing with Cigna, it did everything it could to weaken Cigna's competitive status.

69. At trial, Anthem focused its efforts on eliciting false and disparaging testimony about Cigna. For example, Anthem caused one of its expert witnesses to testify that—contrary to all real-world evidence and to Anthem's public statements at the outset of the deal praising Cigna's strengths—Cigna was not a leader in value-based care. This testimony was designed to undercut Cigna and bolster Anthem's own business. Anthem executives also gave similar false testimony disparaging Cigna's standing in the market. Anthem would not have elicited such testimony in open court if it actually intended to acquire Cigna and compete vigorously using the Cigna brand. Rather, instead of defending the transaction, Anthem was set on harming Cigna's interests as an independent company. Indeed, the Anthem sales team began touting these misstatements to potential customers in an effort to win business away from Cigna.

70. After failing to defend the transaction, in its post-trial proposed findings of fact, Anthem abandoned any pretense of seeking to acquire Cigna for its innovative offerings or its pioneering value-based care. After telling the market that Cigna's "distinctive strengths" were, among other things, its "consumer-centric technology platforms" and value-based care model, Anthem's findings of fact were singularly aimed at undercutting Cigna and elevating Anthem's own

relative position in the market. Anthem's disparagement of Cigna was blatant: Anthem alleged that it "le[]d the competition in value-based initiatives" and that Cigna was unable "to do value-based care effectively," called Cigna a "second tier" competitor, and sought to discredit Cigna's growth model. In so doing, Anthem relinquished any plausible defense for the merger, reinforcing the government's argument that Anthem had pursued the transaction with the aim of eliminating an innovative competitor in the industry.

71. Anthem's false and malicious statements thus gave Cigna no option but to take certain limited measures to correct the factual record and protect the interests of the company and its stockholders. In particular, Cigna could not in good faith endorse the inaccurate statements made in Anthem's proposed findings of fact, which, as the trial judge described, were "distressing" and "insulting" in their misleading presentation of facts. Nor could Cigna stand by while Anthem's unilaterally-retained expert disparaged Cigna's business model through inaccurate testimony which served no purpose in defending the deal and served only to malign Cigna. Cigna's witnesses also had to testify truthfully in response to the questions asked of them, which created tension with Anthem's attempt to tell a story that was divorced from reality. Anthem thus further undermined the chances of success in the litigation by putting its desire to harm Cigna ahead of presenting a credible defense of the transaction.

72. In addition to its damaging conduct before the district court, Anthem's misuse of Cigna's confidential information, which had already been a major concern for Cigna, became even more apparent as the deal neared its end. At a JPMorgan healthcare conference in early January 2017, Anthem touted to investors that it had learned valuable information from Cigna, including about how to sell certain specialty products that Anthem does not currently offer, and would use that information to compete against Cigna if the transaction did not close. Anthem's management reiterated this point in discussions with securities analysts following the company's February 1, 2017 earnings call. Anthem told UBS, for example, that from the due diligence it conducted on Cigna, Anthem learned that Cigna has a "great franchise" that is "way better" than Anthem in a number of areas, including integrated healthcare management and specialty products, and Anthem would use what it had learned from Cigna to create an "upside opportunity" for Anthem if the deal did not close. Anthem made similar statements to AllianceBernstein, adding that it would focus on a "stop-loss" product—an offering to self-insured employers for which Cigna is well-known as a market leader. Again, these comments confirmed Anthem's malicious intent to use the merger agreement to improve its competitive standing in the market, to Cigna's detriment.

D. The District Court enjoins the deal, leaving no viable path to closing.

73. Trial on the government's claims to block the transaction proceeded in the U.S. District Court for the District of Columbia, before Judge Amy Berman Jackson, from November 21, 2016 through January 4, 2017. Judge Jackson bifurcated the case into two phases, corresponding to the primary claims that the government leveled against the transaction: (1) that it would unlawfully harm competition in the market for national accounts, and (2) that it would unlawfully harm competition in 35 local markets.

74. On January 18, 2017, while a decision from Judge Jackson remained pending, Anthem issued a notice to Cigna purporting to extend the Termination Date under the merger agreement from January 31, 2017 to April 30, 2017. The notice stated that, regardless of the outcome of the district court's proceeding, "additional time will be needed to consummate the merger." In separate correspondence, Anthem's General Counsel also stated that, if the district court enjoined the merger, Anthem would seek an expedited appeal of the decision. This correspondence also stated that it was "Anthem's position that Cigna has no right to terminate the merger agreement on or after the initial termination date, January 31, 2017."

75. Anthem's breaches of the merger agreement continued even while the court's decision was pending. On January 25, 2017, Anthem communicated to the

DOJ that it intended to make a supplemental post-trial filing. In breach of Anthem's consultation obligation under the merger agreement, Anthem failed to give Cigna any advance notice that it was contacting the government and then made its filing with the court only hours after sending a draft to Cigna—an empty gesture that provided Cigna no meaningful opportunity to review. Anthem's unilateral action proved to be misguided: Judge Jackson responded that she "would have denied any motion for leave to file such a pleading if Anthem had asked before docketing it."

76. On February 8, 2017, Judge Jackson issued a detailed, 140-page opinion finding for the government and enjoining the transaction. Judge Jackson concluded that the merger would be anticompetitive because it would "eliminate the two firms' vigorous competition against each other for national accounts, reduce the number of national carriers available to respond to solicitations in the future, and diminish the prospects for innovation in the market." The opinion further observed that Anthem had been unable "to demonstrate that its plan [was] achievable or that it [would] benefit consumers as advertised," including because Anthem's own documents revealed that it had "considered a number of ways to capture [the claimed savings from the merger] for itself and not pass them through to the customers as it insisted in court that it would." Because the district court found that the transaction would harm competition in the market for national

accounts, it did not need to reach the question of whether the merger would harm competition in 35 local markets. Judge Jackson did, however, add that the evidence supported the government's claim as to at least one of those markets, Richmond, Virginia.

77. Immediately after the opinion came down, and before the parties were even permitted to review it in light of the confidentiality rules in the case, Anthem informed Cigna that it would be issuing a press release vowing to appeal and "aggressively" pursue the transaction, offering no explanation for how it had reached the determination that this course was appropriate. Cigna prudently informed Anthem that it believed the parties should review the opinion and then have a discussion about how to proceed. Anthem refused to have any such discussion and, on February 9, still before a public version of the opinion was even available, filed a hasty notice of appeal in the D.C. Circuit. In an appellate filing and subsequent correspondence, Anthem confirmed that it "disputes that Cigna has a right to terminate at all" and that "Cigna has no right to terminate the Merger Agreement even if final approvals have not been received by April 30," but is nevertheless seeking a ruling on the merits from the D.C. Circuit by that date.

78. Anthem's claim that it can somehow get the deal approved before April 30 is contrary to both reality and to Anthem's prior statements. An appeal to the D.C. Circuit will almost certainly not be decided within the timeframe Anthem

is seeking. But even if Anthem were somehow to get the injunction overturned, significant additional obstacles to closing the transaction would remain, including a likely remand to the district court to address the government's remaining claim concerning anticompetitive harm in the 35 local markets. Anthem must also secure approval from thirteen additional states, five of which have not even held a hearing yet, as well as from three international jurisdictions.

79. Anthem has already admitted that, even *without* a federal injunction, getting through the state approval process would take 120 days. In an August 2, 2016 submission to the district court, Anthem stated that, "[a]s a practical matter . . . Anthem's ability to close its acquisition of Cigna depends on [the district court] action concluding (without an injunction) before the end of 2016, thereby leaving 120 days to obtain the remaining State regulatory approvals before the extended Termination Date of April 30, 2017." On August 12, 2016, Anthem again told the court at a status conference that the "April 30th date [was] fixed" and that a judicial decision at least 120 days prior to that date would be needed to secure necessary state approvals. Now, with only 75 days before April 30, Anthem, by its own admission, does not have the time to appeal the federal injunction, succeed on that appeal, get the injunction overturned, and secure approvals from sixteen additional jurisdictions. Anthem is pursuing a course that cannot succeed and that will only further harm Cigna.

80. On February 14, 2017, Cigna delivered a notice of termination informing Anthem that Cigna was terminating the merger agreement pursuant to Section 7.1(b). Cigna sent the notice to Anthem and other persons entitled to receive notice under the merger agreement.

E. Anthem's conduct has caused substantial harm to Cigna.

81. The merger agreement entitles Cigna to at least the $1.85 billion Reverse Termination Fee if the transaction cannot close for regulatory reasons. Because Anthem has committed numerous Willful Breaches of its contractual obligations under the merger agreement, however, Sections 7.2 and 7.3(e) are clear that Cigna is not limited to the Reverse Termination Fee. Anthem also must pay the damages resulting from its breaches.

82. Anthem's intentional actions described above directly undercut its ability to secure regulatory approval for the transaction. As a result, Cigna and its stockholders have lost the substantial benefits that they expected to receive from the transaction, including a premium of over $13 billion. They have also lost the opportunity to participate in a combined company that, had Anthem pursued the strategy that the parties envisioned at the outset, would have generated substantial returns for its stockholders (including former Cigna stockholders).

83. Anthem has also worked to directly undercut Cigna in the marketplace, including by maligning Cigna's reputation in public testimony,

seeking to harm Cigna's relationships with its customers and potential customers, and misappropriating Cigna's confidential information. These actions have caused competitive harm to Cigna. This harm is ongoing, as shown, for example, by Anthem's repeated statements to the market that it will use Cigna's competitive information to bolster its own business. Anthem cannot be permitted to continue this damaging conduct, and it must be held liable for the harm it has already inflicted on Cigna.

COUNT I
(Declaratory Judgment – Termination of Merger Agreement)

84. Cigna repeats and realleges the allegations of paragraphs 1 through 83 as if fully set forth herein.

85. The Court is authorized to issue a declaratory judgment under 10 *Del. C.* §§ 6501-6505.

86. An actual controversy exists between Cigna and Anthem regarding whether the merger agreement should be deemed terminated pursuant to Section 7.1(b) and whether Anthem has validly extended the Termination Date pursuant to such section. In accordance with 10 *Del. C.* §§ 6501 and 6502, Cigna has a legal interest in this Court construing this provision of the merger agreement.

87. Section 7.1(b) of the merger agreement provides that the agreement may be terminated "[b]y either Anthem or Cigna, if the Merger shall not have been consummated on or before January 31, 2017 (the 'Termination Date')."

88. The Merger was not consummated on or before January 31, 2017.

89. Cigna delivered a notice of termination to Anthem, in compliance with the notice provisions of the merger agreement, on February 14, 2017.

90. Cigna has fully performed its obligations under the merger agreement. No failure of performance by Cigna proximately caused or resulted in the failure of the Merger to have been consummated by the Termination Date.

91. Anthem is not entitled to extend the Termination Date:

i. Under Section 7.1(b) of the merger agreement, a party may extend the Termination Date to April 30, 2017 only "if all of the conditions to Closing shall have been satisfied or shall be then capable of being satisfied, other than the conditions set forth in Section 6.1(a) (but only if the applicable Legal Restraint constitutes a Regulatory Restraint) and Section 6.1(b)."

ii. Under Section 6.3(b) of the merger agreement, Cigna's obligation to effect the merger is subject to the condition that "Anthem and Merger Sub shall have performed or complied in all material respects with all agreements and covenants required to be performed by them under this Agreement at or prior to the Closing Date."

iii. Anthem has materially breached its covenants and agreements under the merger agreement as set forth above and in Counts III through V below. Accordingly, the condition in Section 6.3(b) is not satisfied, and it is not true that

all conditions to Closing other than those set forth in Sections 6.1(a) and 6.1(b) are satisfied.

iv. Any extension of the Termination Date would also be futile as it is impossible for Anthem to obtain regulatory approval by April 30, 2017.

92. Cigna is, therefore, entitled to a declaration that the merger agreement is terminated, effective as of February 14, 2017, and that Anthem's purported extension of the Termination Date to April 30, 2017 was not valid.

93. In the alternative, if the Court determines that Anthem's purported extension of the Termination Date was valid, Cigna is entitled to a declaration that the merger agreement will be terminated immediately after the earlier of (i) the date on which the district court's injunction or any other regulatory restraint on closing becomes final and non-appealable, or (ii) April 30, 2017.

COUNT II
(Reverse Termination Fee)

94. Cigna repeats and realleges the allegations of paragraphs 1 through 93 as if fully set forth herein.

95. Section 7.3(e) of the merger agreement provides that Anthem is required to pay Cigna a $1.85 billion Reverse Termination Fee, among other things, if the merger agreement is terminated pursuant to Section 7.1(b).

96. As set forth in Count I above, Cigna has validly terminated the merger agreement pursuant Section 7.1(b).

97. The only potentially relevant exception to Anthem's obligation to pay the Reverse Termination Fee—if the failure to obtain regulatory approval was "caused by Cigna's Willful Breach" of its reasonable best efforts obligations—is inapplicable here. Cigna has fully complied with its obligations under the merger agreement, and the failure to obtain regulatory approval was not caused by any Willful Breach by Cigna.

98. Anthem is, therefore, obligated to pay Cigna the $1.85 billion Reverse Termination Fee in its entirety under Section 7.3(e) of the merger agreement within two business days of the date of termination of the merger agreement.

COUNT III
(Breach of Contract – Failure to Use Reasonable Best Efforts)

99. Cigna repeats and realleges the allegations of paragraphs 1 through 98 as if fully set forth herein.

100. Section 5.3(a) of the merger agreement required Anthem to use "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." This obligation extended under Section 5.3(b) to "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," including, among other things, obtaining all Necessary Consents, resolving any objections that may be asserted by the

government, and opposing "fully and vigorously" any litigation initiated to block the merger.

101. Anthem committed multiple willful and material breaches of its obligations under Section 5.3 of the merger agreement. In particular, as more fully set forth above, Anthem (i) failed to develop a viable regulatory strategy to secure antitrust approval, including by failing to engage with the government; (ii) unilaterally acted at trial to malign Cigna and harm Cigna's standing in the market rather than to support approval of the transaction; (iii) introduced testimony and evidence that were false or contrary to the factual record, undermining the credibility of the defense of the transaction; (iv) failed to make any effort to resolve the Blues-related impediments to the deal and instead adopted a "bias to Blue" plan designed to strengthen Anthem's own business and its fellow Blues while damaging the prospects of regulatory approval for the merger; (v) undertook damaging outreach to Cigna's customers; (vi) assembled a "secret" integration team in an attempt to cut Cigna out of merger planning; and (vii) misappropriated Cigna's competitive business information for its own gain.

102. Each of the foregoing breaches was a Willful Breach as defined in the merger agreement. Anthem committed the "material breach" with "actual knowledge" that its act or omission would constitute a material breach of the merger agreement. Merger Agreement § 8.13.

103. Cigna is entitled to damages due to Anthem's Willful Breaches pursuant to Sections 7.2 and 7.3(e) of the merger agreement.

104. Cigna and its stockholders were damaged by Anthem's Willful Breaches in an amount that will be determined at trial.

COUNT IV
(Breach of Contract – Failure to Consult with Cigna)

105. Cigna repeats and realleges the allegations of paragraphs 1 through 104 as if fully set forth herein.

106. The merger agreement required Anthem to consult with Cigna in developing its regulatory and litigation strategy. In particular, Sections 5.3(e) and 5.8 of the merger agreement specifically barred Anthem from unilaterally making any filings, issuing any press release or communications relating to the merger, or pursuing any meetings with the government without first notifying Cigna and giving it the opportunity to comment. Section 3.2 of the Amended and Restated Mutual Non-Disclosure Agreement ("NDA"), dated as of August 6, 2014, between Anthem and Cigna, which is incorporated into the merger agreement, further barred Anthem from contacting Cigna's customers without Cigna's consent.

107. Anthem breached these obligations by, among other things: (i) failing to keep Cigna apprised of and consult Cigna with respect to its regulatory and litigation strategy; (ii) engaging in damaging outreach to Cigna's customers without notifying or consulting Cigna; (iii) attending meetings with governmental

entities without including Cigna; (iv) engaging in substantive discussions with the government, and sending communications to the government, concerning the DOJ litigation without giving Cigna notice or the opportunity to participate; (v) placing advertisements criticizing the government without notifying or consulting Cigna; (vi) disregarding Cigna's urging that a credible divestiture plan needed to be developed; (vii) persistently failing to acknowledge or incorporate Cigna's advice and feedback in its advocacy efforts; and (viii) failing to give Cigna a meaningful opportunity to review litigation filings.

108. Each of the foregoing breaches was a Willful Breach as defined in the merger agreement. Anthem committed the "material breach" with "actual knowledge" that its act or omission would constitute a material breach of the merger agreement. Merger Agreement § 8.13.

109. Cigna is entitled to damages due to Anthem's Willful Breaches pursuant to Sections 7.2 and 7.3(e) of the merger agreement.

110. Cigna and its stockholders were damaged by Anthem's Willful Breaches in an amount that will be determined at trial.

COUNT V
(Breach of Contract – Misuse of Confidential Information)

111. Cigna repeats and realleges the allegations of paragraphs 1 through 110 as if fully set forth herein.

112. Sections 5.2 and 5.3(e) of the merger agreement required Anthem to protect Cigna's confidential information; the Anthem-Cigna NDA also imposed such obligations on Anthem. Anthem repeatedly breached these obligations and harmed Cigna in the marketplace by misappropriating and failing to protect Cigna's confidential information, and using that information for Anthem's own gain.

113. Anthem resisted Cigna's repeated attempts to implement robust information security protocols in the integration process and disregarded Cigna's significant confidentiality concerns, including those specifically raised before the Steering Committee. Anthem deliberately took advantage of the lax control environment it had created so it could obtain access to Cigna's competitive business information and then improperly leverage this knowledge in the marketplace.

114. Among its many breaches, Anthem misappropriated confidential information Cigna shared during the integration process to develop its new Facility Reimbursement Policy. Anthem's litigation against Express Scripts also indicated that Anthem used Cigna's competitive business information for its own gain. And Anthem stated, including in discussions with investors and securities analysts, that it would use information taken from Cigna, including about how to sell certain

specialty products that Anthem does not currently offer, to compete against Cigna if the transaction did not close.

115. Each of the foregoing breaches was a Willful Breach as defined in the merger agreement. Anthem committed the "material breach" with "actual knowledge" that its act or omission would constitute a material breach of the merger agreement. Merger Agreement § 8.13.

116. Cigna is entitled to damages due to Anthem's Willful Breaches pursuant to Sections 7.2 and 7.3(e) of the merger agreement.

117. Cigna and its stockholders were damaged by Anthem's Willful Breaches in an amount that will be determined at trial.

REQUEST FOR RELIEF

WHEREFORE, Cigna Corporation, on behalf of itself and its stockholders, respectfully requests judgment:

i. Declaring that the merger agreement is terminated, effective as of February 14, 2017, and that Anthem's purported extension of the Termination Date to April 30, 2017 was not valid;

ii. In the alternative, if the Court determines that Anthem's extension of the Termination Date was valid, declaring that Cigna is entitled to terminate the merger agreement immediately after the earlier of (i) the date on which the district

court's injunction or any other regulatory restraint on closing becomes final and nonappealable, or (ii) April 30, 2017;

iii. Ordering Anthem to pay Cigna the $1.85 billion Reverse Termination Fee under the merger agreement and all interest accruing on any portion thereof that remains unpaid from the date that is two business days after the date of termination of the merger agreement;

iv. Ordering Anthem to pay Cigna damages in an amount to be proven at trial, including but not limited to over $13 billion of lost premium value to Cigna's stockholders;

v. Awarding Cigna attorneys' fees and costs associated with this action; and

vi. Awarding Cigna such other relief as the Court deems just and proper.

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