DELAWARE CORPORATE LAW BULLETIN

Chancery Court Determines that Merger Partner Breached "Efforts Covenants" in Connection with "[S]tar-[C]rossed" Combination of Health Insurance Giants

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But refuses to award damages to either Anthem or Cigna in light of DOJ decision to block transaction due to antitrust concerns

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INTRODUCTION

Amid a flurry of industry consolidations, Anthem, Inc. ("*Anthem*") and Cigna Corporation ("*Cigna*"), the second and third largest health insurers in the United States, entered into an Agreement and Plan of Merger dated July 23, 2015 ("*Merger Agreement*"). In what Vice Chancellor J. Travis Laster of the Delaware Court of Chancery ("*Chancery Court*") subsequently labelled a "corporate soap opera," the relationship between the two industry giants quickly soured, largely over integration and leadership-related issues. Recognizing that the proposed consolidated enterprise ("*NewCo*") would be the nation's largest health insurer, the United States Department of Justice ("*DOJ*") successfully sued to block the transaction in the U.S. District Court for the District of Columbia ("*DC District Court*"). Once the Merger Agreement was terminated, litigation ensued in Chancery Court, with each of Anthem and Cigna alleging that the other breached various Merger Agreement provisions.

In *In re Anthem-Cigna Merger Litig.*, No. 2017-0114-JTL, 2020 WL 5106556 (Del. Ch. Aug. 31, 2020) ("*Anthem-Cigna Litigation*"), Vice Chancellor Laster authored a remarkable 306-page opinion—so long and detailed, in fact, that he included a 3-page table of contents—declaring that Cigna breached efforts covenants in the Merger Agreement. However, because Cigna proved that, even if it had fulfilled all of its obligations under the Merger Agreement, the DC District Court nevertheless would have enjoined the transaction, the Vice Chancellor refused to award damages to Anthem. For its part, Anthem convinced the Vice Chancellor that it was not liable to Cigna for (i) breach of the efforts covenants or (ii) payment of a so-called "reverse termination fee." As the Vice Chancellor recognized, "[t]his outcome leaves the parties where they stand," requiring them to "deal independently with the consequences of their costly and ill-fated attempt to merge."

I. FACTUAL BACKGROUND

A. Consolidating Health Insurance Industry

By early 2014, both Anthem and Cigna saw the potential strategic benefit of a combination of their businesses. The health insurance market was heavily consolidated, with five major players dominating the national market. Further, both companies believed that the next major transaction could be the last to be cleared by antitrust regulators. Accordingly, Anthem CEO Joseph Swedish ("*Anthem CEO*") and Cigna CEO David Cordani ("*Cigna CEO*") began to negotiate a potential combination. The two CEOs exemplified wildly divergent corporate cultures—the Anthem CEO was a "traditional CEO who valued hierarchy," while the Cigna CEO was a "charismatic visionary who inspired deep personal loyalty." To the Anthem CEO, "Cigna seemed like a 'cult associated with [the Cigna CEO's] ego drive.' "

Anthem was a member of the Blue Cross Blue Shield Association ("*Blues Association*"), which owns the valuable Blue Cross and Blue Shield trademarks ("*Blues Brands*"). The Blues Association in turn licenses the Blues Brands "to thirty-six member plans to use in exclusive service areas." All thirty-six Blues Association members collectively administer a set of rules ("*Blues Rules*") requiring (among other things) that each member (including Anthem) employ "best efforts to generate at least 66.67% of its total annual revenue" using the Blues Brands. Anthem held exclusive licenses to Blues Brands "in all or part of fourteen states" ("*Anthem Blue States*"), while relying on "its membership in the Blues Association" to "service national accounts." In the Anthem Blue States, "Anthem used its size to negotiate deep discounts from healthcare providers."

By contrast, Cigna utilized a national network of providers covering all fifty states. However, "[b]ecause Cigna was smaller and its members were more geographically dispersed, Cigna often could not obtain the lowest discounts from providers." To stay competitive, Cigna "specialized in value-based care," focused on establishing measures of overall patient health and paying providers to improve those metrics. Accordingly, the Blues Rules ultimately would be a sticking point in the Merger Agreement negotiations: because Cigna was not a Blues Association member, NewCo's total postcombination revenue would fail the Blues Rules.

B. Merger Negotiations Face Serious Obstacles

In their initial negotiations, both parties recognized the difficulty of "navigating the . . . quagmire" of the Blues Rules, as well as the fact that divestitures might be required in certain local markets to obtain antitrust clearance. Despite these potential stumbling blocks, both Anthem and Cigna saw the "economics of the transaction" as "very compelling and [would] generate substantial shareholder value." Further, to achieve compliance with the Blues Rules, the parties initially agreed that either (i) NewCo's divestiture of some non-Blues business or (ii) a "rebranding" of non-Blue business—by moving Cigna customers in Anthem Blue States onto Anthem plans—were potential solutions.

For his part, the Cigna CEO envisioned (somewhat incongruously) a transaction whereby Anthem would technically acquire Cigna at "a significant premium for [Cigna] stockholders," but he and Cigna management would control NewCo management. Accordingly, the Cigna CEO was adamant that either he would be named CEO of NewCo at closing, or a clear path for him to become CEO shortly thereafter would be identified. The Cigna CEO also sought guarantees about the number of former Cigna directors who would serve on NewCo's board of directors ("*NewCo Board*") postclosing. Anthem attempted to deflect these issues by promising the Cigna CEO that he and the Anthem CEO would co-chair the integration team postsigning, but negotiations stalled repeatedly as the Cigna CEO requested clarity on the leadership issue. Only following media coverage of a power struggle between the two CEOs were the two sides able to reach, on July 4, 2015, an agreement in principle. Under this agreement, the NewCo Board would have nine Anthem designees (including the Anthem CEO) and five Cigna designees (including the Cigna CEO), the Anthem CEO would serve as NewCo's CEO, and the Cigna CEO would serve as NewCo's President and COO. Nevertheless, the Anthem CEO remained suspicious of the Cigna CEO, who previously "had gained the CEO position at Cigna through a boardroom coup" from his position as Cigna COO. Meanwhile, the Cigna CEO and his team resented Anthem acting like the acquirer when Cigna executives viewed the transaction as a combination of equals.

C. Merger Agreement Signed as CEO Power Struggle Ensues

Ultimately, the Merger Agreement called for Cigna stockholders to receive "total consideration of over $54 billion," or $188 per share

payable in cash and shares of NewCo stock, "reflecting a premium of 38.4% over Cigna's unaffected market capitalization." Pro forma, "former Anthem stockholders would own approximately two-thirds of NewCo's equity, and former Cigna stockholders would own approximately one-third."

The Merger Agreement included an array of covenants (collectively, "*Efforts Covenants*") obligating the parties to work towards closing. Among them were a

- **Reasonable Best Efforts Covenant** requiring the parties to use "reasonable best efforts" to satisfy all conditions to closing enumerated in the Merger Agreement ("*Reasonable Best Efforts Covenant*");
- **Regulatory Efforts Covenant** requiring the parties to take "any and all actions necessary to avoid any legal impediment" raised by governmental authorities ("*Regulatory Efforts Covenant*"); and
- **Regulatory Cooperation Covenant** requiring the parties to cooperate in specified ways in seeking regulatory approval and authorizing Anthem to direct the process ("*Regulatory Cooperation Covenant*").

The Merger Agreement also subjected the parties' obligations to consummate the transaction to numerous conditions, chief among them "the absence of any injunction that would prevent consummation" of the transaction ("*No Injunction Condition*"). Additionally, either party was entitled to terminate the Merger Agreement (among other reasons) if (i) the other party breached its obligations under the Merger Agreement ("*For Cause Termination*") or (ii) the transaction was not consummated by an outside termination date ("*Temporal Termination*"), which was originally January 30, 2017 ("*Original Termination Date*"). Both parties were entitled to extend the Original Termination Date to April 30, 2017. Finally, if the transaction was not completed by the Original Termination Date due to a failure to clear regulatory hurdles, Anthem was obligated, under certain narrowly defined circumstances, to pay Cigna a reverse termination fee of $1.8 billion ("*Reverse Termination Fee*").

On an investor call soon after signing, both companies expressed optimism about the combination, stressing three points:

- "We are confident in our ability to obtain regulatory approval, as our operations are highly complementary and will provide greater choice . . . ."

- "The marketplace is, and will remain, highly competitive, and customers will continue to have a wide range of competitors to choose from."
- "Both companies have engaged antitrust counsel and economists to provide an assessment of competitive overlap. The results of those assessments support our confidence in the transaction obtaining DOJ approval."

The companies also expressed confidence in their ability to navigate any Blues Rules complications. In fact, the joint proxy statement circulated to solicit Anthem and Cigna stockholder approval asserted that, even if NewCo was not in compliance with the Blues Rules at closing, NewCo would have twenty-four months thereafter to implement a plan to achieve compliance. Stockholders of both companies voted to approve the combination in December 2015.

On the regulatory front, the parties filed the required notifications under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, promptly following announcement of the combination, and then placed courtesy calls to the DOJ. While recognizing that the combination would reduce the total number of players in the national market, Anthem and Cigna hoped to emphasize to the DOJ that this potentially anticompetitive effect would be "substantially outweighed" by the combination's operational, medical network, medical costs management, and other efficiencies, estimated to exceed $2 billion over two years. Nevertheless, the DOJ immediately signaled that the Blues Rules would be a key area for investigation.

To quantify these efficiencies more accurately, the parties renewed their focus on integration planning. However, this effort quickly broke down as negotiations over NewCo's Executive Leadership Team commenced. Anthem's desire for the Anthem CEO to control this process irritated Cigna leadership. When Cigna resisted providing requested information, the Anthem CEO sought to "significantly" reduce the Cigna CEO's role in NewCo. The Anthem CEO actually wanted the Cigna CEO removed from NewCo's plans going forward, but Anthem's board of directors urged him to be conciliatory.

D. Cigna Leadership Grows Hostile

In response to the Anthem CEO's attempt to limit the Cigna CEO's role, Cigna leadership pursued an action plan aimed at limiting integration planning and restoring the Cigna CEO's role in the combined organization. From their point of view, Anthem was effectively "launching a hostile takeover of Cigna." To this end, Cigna

leadership refused to plan for integration beyond "Day 1 activities" postcombination. "Hostile Alternatives" were mapped out, including an investor campaign, a public relations campaign, a government affairs strategy, and a plan for legal action. In addition, Cigna covertly hired Teneo, "an exceptional communications/strategy advisory firm," to conduct a stealth campaign to influence media and public discourse against the transaction.

By late March 2016, Cigna's leadership definitively turned against the combination, though this attitude was not explicitly conveyed to Anthem. While disagreement concerning NewCo's leadership was the primary fault line between the two parties, externally Cigna emphasized that regulatory problems were the primary hurdles to closing. As Cigna largely refused to cooperate with integration planning, Anthem created its own independent team to plan NewCo's integration. Meanwhile, Cigna leadership began examining the company's potential as a stand-alone entity.

By this time, the DOJ had identified several salient concerns with the combination. To address these concerns, the DOJ requested "white papers" addressing several key issues, but during their preparation, the parties' legal counsel quickly found themselves in conflict. When Cigna's legal counsel refused to provide Anthem lawyers with requested information, the two firms soon "abandoned any pretense of collaboration."

By early May, Teneo was pursuing a "leak strategy," providing reporters with information critical of the combination and highlighting Cigna's potential as a standalone company. On May 22, the *Wall Street Journal* published a story titled "Anthem, Cigna Privately Bicker as They Seek Merger Approval." Other media outlets produced similar stories. The general consensus was that regulatory approval would be difficult to achieve.

On June 10, the DOJ conveyed "very serious concerns" with the transaction, including fears that the combination would stifle "the benefits and innovation that Cigna has brought to the marketplace." While expressing skepticism that its concerns could be alleviated, the DOJ indicated an openness to potential remediation through divestitures. Although Anthem identified several potential buyers of divested assets, Cigna declined to enter into nondisclosure agreements or provide information to potential buyers it considered "non-viable." On July 10, Anthem presented a divestiture proposal to the DOJ. When Cigna refused to cooperate, the DOJ viewed Cigna's attitude as a "red flag." Meanwhile, Teneo unfurled a new communications plan attacking

Anthem's regulatory strategy, claiming the Blues Rules would inhibit NewCo's ability to grow and criticizing the Anthem CEO's leadership.

E. DOJ Blocks the Transaction; Litigation Between the Parties Ensues

After the DOJ asked the DC District Court to enjoin the proposed combination on July 21, Anthem mounted a vigorous defense. As part of its campaign, Anthem issued a press release criticizing the DOJ's decision and ran advertisements in major newspapers supporting the combination. Cigna, by contrast, made no such effort, declining to join the press release while asserting that it was "evaluating its options." Cigna purported to defer to Anthem's right under the Merger Agreement to take the lead in the litigation, but behind the scenes, Cigna sought to undermine Anthem's defense.

The DC District Court encouraged mediation, but Cigna resisted all such efforts despite the DOJ's apparent willingness to consider a settlement. Cigna also refused Anthem's request to speak with Cigna clients to identify potential witnesses to give favorable trial testimony. While Anthem prepared discovery requests and took or defended 109 depositions, Cigna only asked limited questions of its own witnesses, in each case eliciting testimony supporting the DOJ's case.

While awaiting the DC District Court's ruling, on January 18, 2017, Anthem exercised its right under the Merger Agreement to extend the Original Termination Date to April 30 ("*Anthem Extension*"). On February 8, the DC District Court "permanently enjoined" the transaction. Anthem appealed this ruling to the U.S. Court of Appeals for the District of Columbia ("*DC Circuit*"). Cigna declined to join this appeal and, instead, on February 14, delivered a notice purporting to terminate the Merger Agreement on the basis of a Temporal Termination ("*February 14 Termination Notice*"). In this connection, Cigna claimed that the Anthem Extension "was invalid because Anthem had not complied with its contractual obligations" under the Efforts Covenants.

In response, Anthem filed suit in Chancery Court, seeking a temporary restraining order blocking Cigna from terminating the Merger Agreement ("*TRO*"). The Chancery Court granted the TRO, but on April 28, the DC Circuit affirmed the DC District Court's order blocking the combination. After Anthem decided not to ask the U.S. Supreme Court to hear the case, the TRO was lifted and, on May 12, Anthem invoked a For Cause Termination on the ground that Cigna had breached its obligations under the Merger Agreement. Later that

same day, Cigna delivered its own termination notice to Anthem ("*May 12 Termination Notice*").

The parties then pursued their respective contractual claims in Chancery Court:

- For its part, Anthem claimed that "Cigna breached its obligations under the Efforts Covenants and sought expectation damages of $21.1 billion."
- Cigna countered with two separate claims against Anthem:
  - expectation damages of $14.7 billion for breach of the Regulatory Efforts Covenant; and
  - payment of the Reverse Termination Fee.

After (i) two years of discovery and trial preparation, (ii) a trial lasting from late February to early March 2019, (iii) "extensive post-trial briefing," (iv) a November 2019 posttrial argument, (v) preparation of supplemental submissions requested by the Vice Chancellor, and (vi) the filing of the submissions in late November, the Vice Chancellor seemingly was ready to rule. However, because of the impact of "the novel coronavirus and the resulting COVID-19 pandemic" on Chancery Court operations, as well as "required additional time given the magnitude of the record," the Vice Chancellor's "overly lengthy opinion was sadly too long delayed." In his decision eventually issued at the end of August 2020, the Vice Chancellor found shortcomings in both parties' approach to the proposed combination but ultimately denied damages to either side.

II. VICE CHANCELLOR LASTER'S ANALYSIS

A. Framework for Judicial Review

In addressing the alleged breaches of the Efforts Covenants, Vice Chancellor Laster relied heavily on the causation analysis framework of the *Restatement (Second) of Contracts* (1981) ("*Restatement*"). This framework recognizes that "[p]erformance of a duty subject to a condition cannot become due unless the condition occurs or its non-occurrence is excused." However, the Restatement also recognizes that "where a party's breach by non-performance contributes materially to the non-occurrence of a condition of one of his duties, the nonoccurrence is excused." To demonstrate that a party's breach "contributed materially" to the condition's nonoccurrence, "it is not necessary to show that the condition would have occurred but for the lack of cooperation. It is only required that the breach have contributed materially to the non-occurrence." Nevertheless, "if it can

be shown that the condition would not have occurred regardless of the lack of cooperation, the failure of performance did not contribute materially to its non-occurrence and the rule does not apply. The burden of showing this is properly thrown on the party in breach."

Against this backdrop, the Vice Chancellor found that, despite demonstrable breaches of the Efforts Covenants and the impact such breaches may have had on the failure of the No Injunction Condition, neither party was liable to the other because the No Injunction Condition would have failed regardless of the parties' efforts. In other words, even if both parties performed their covenants perfectly, the DOJ would nevertheless have prevailed in blocking the transaction.

B. Reasonable Best Efforts Covenant

The Reasonable Best Efforts Covenant required each party to "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." While this obligation did not "require a party 'to sacrifice its own contractual rights for the benefit of its counterparty,' " it did require them "to take all reasonable steps to solve problems and consummate the transaction."

According to Vice Chancellor Laster, Cigna breached this covenant by "working actively against the [combination] and trying to prevent it from closing." Specifically, the evidence showed that Cigna (i) engaged in "a covert communications campaign" to depict the combination "as anti-competitive, anti-consumer, and anti-innovation," and (ii) withdrew from integration planning, which "contributed materially" to the issuance of the DC District Court's injunction. As such, Cigna was not a problem solver.

C. Regulatory Efforts Covenant

According to Vice Chancellor Laster, the Regulatory Efforts Covenant "imposed a *stronger* contractual duty" (emphasis added) than the Reasonable Best Efforts Covenant by requiring "the parties to 'tak[e] any and all actions necessary to avoid each and every impediment' " to enable the transaction to close from a regulatory, governmental, or legal standpoint, *regardless* of the level of effort expended. While the Reasonable Best Efforts Covenant "recognize[d] that some extreme actions may be beyond a party's best efforts," the Regulatory Effects Covenant "does not admit exclusions." At the same time, the Regulatory Efforts Covenant was "*narrower*" (emphasis

added) because, unlike the Reasonable Best Efforts Covenant, it "applied only with respect to the 'discrete regulatory subject' . . . to address impediments that a Governmental Entity could assert" under antitrust, insurance, or healthcare regulatory regimens.

To justify its lack of cooperation, Cigna argued that the Regulatory Efforts Covenant was not a broad " 'hell or high water' provision," stressing that the covenant did not state explicitly that its requirements were "unconditional." Vice Chancellor Laster declined to be drawn into this particular argument, explaining that this "label does not matter. What counts is the plain language of the provision."

The Vice Chancellor found that Cigna breached the "plain language" of the Regulatory Efforts Covenant by obstructing opportunities for both divestiture and mediation. With respect to divestiture as a potential solution to the DOJ's objections, Cigna not only declined to identify potential buyers but also refused to enter into nondisclosure agreements with, or provide information for due diligence to, potential buyers identified by Anthem. With respect to mediation, "Cigna's resistance . . . made settlement less likely." All in all, the Vice Chancellor noted that, once Cigna had turned "solidly against" the combination, the stymieing of the regulatory approval process became "their ticket out" of the transaction.

For its part, Cigna claimed that Anthem's regulatory strategy breached the Regulatory Efforts Covenant by (i) "failing to pursue every option to change the Blues Rules" and (ii) "omitting $704 million of potential . . . synergies" in its presentation to the DOJ. The Vice Chancellor rejected this claim, concluding instead that Anthem pursued a "viable regulatory strategy" by exploring divestitures and seeking mediation with the DOJ. Recognizing "how badly the regulatory process turned out," the Vice Chancellor noted that "it is easy to question Anthem's strategy." Nevertheless, he concluded that "Anthem adopted a reasonable approach" and "did not willfully breach its obligations under the Efforts Covenants."

D. Regulatory Cooperation Covenant

The Regulatory Cooperation Covenant obligated the parties to cooperate in seeking regulatory approval of the proposed combination. By its terms, this covenant allowed Anthem "to take the lead" in selecting a regulatory strategy while obligating Cigna "to follow Anthem's lead and adhere to Anthem's strategy."

According to Vice Chancellor Laster, Cigna breached the Regulatory Cooperation Covenant (as well as the Regulatory Efforts

Covenant) by "undermining" Anthem's defense of the DOJ's antitrust claims. Instead of making "legal filings 'as promptly as practicable' " and providing "such assistance as [Anthem] may reasonably request," Cigna (among other things)

- "blocked Anthem from contacting . . . Cigna customers to . . . testify as witnesses";
- "failed to take or defend any depositions other than defending the depositions of the six Cigna witnesses" whose testimony ultimately harmed Anthem's case;
- "proposed trial exhibits that undermined" various aspects of Anthem's case while supporting certain aspects of the DOJ's case;
- aggressively cross-examined a key Anthem expert witness, "questioning his credentials and undercutting [his] projections" of medical cost savings and efficiencies;
- "provided exaggerated and embellished testimony and expressed unsupported opinions that helped the DOJ's case and harmed Anthem's defense"; and
- declined to support Anthem's appeal of the DC District Court's ruling.

These actions, according to the Vice Chancellor, "establish[ed] a clear pattern" indicative of a sustained and unswerving effort by Cigna to sabotage the litigation efforts so as to derail the combination. In fact, he noted that the DC District Court recognized Cigna's "opposition" as "the elephant in the courtroom" when it enjoined the transaction.

D. No Injunction Condition

Vice Chancellor Laster recognized that the permanent injunction obtained by the DOJ "constituted a Legal Restraint within the plain language of the No Injunction Condition." And, as noted above, Anthem successfully proved that Cigna's conduct "contributed materially" to the DC District Court's issuance of a permanent injunction, the DC Circuit's affirmance on appeal, and, ultimately, the failure of the No Injunction Condition. At this point, he explained, "the burden . . . shifted to Cigna to prove that even if Cigna had fulfilled its obligations under the Efforts Covenants, the No Injunction Condition still would have failed."

From the Vice Chancellor's point of view, despite Cigna's failure to live up to its obligations under the Merger Agreement, it satisfied this particular burden. Leaning on the *Restatement*'s causation analysis framework, the Vice Chancellor concluded that Cigna's covenant

breaches did not contribute materially to the principal bases for the DC District Court's ruling. Crucially, "even if Cigna had fulfilled its obligations under the Efforts Covenants," it was "more likely than not" that both the DC District Court and the DC Circuit "would have reached the same conclusion." In other words, the No Injunction Condition would have failed regardless of Cigna's actions, relieving Cigna of its obligation to consummate the transaction. Consequently, the Vice Chancellor ruled that Anthem was "not entitled to a damages award to remedy Cigna's breaches of the Efforts Covenants."

E. Reverse Termination Fee

Despite its opposition to the combination, Cigna claimed it became entitled to payment of the Reverse Termination Fee when it invoked a Temporal Termination at a time when the transaction had not received regulatory clearance. Vice Chancellor Laster rejected this claim, concluding that the circumstances under which the Merger Agreement actually was terminated—a For Cause Termination invoked by Anthem—did not trigger payment of the Reverse Termination Fee.

In fact, according to the Vice Chancellor, Cigna never did validly invoke a Temporal Termination. Cigna delivered the February 14 Notice *after* the Anthem Extension validly extended the Original Termination Date to April 30. Simply put, the February 14 Termination Notice came too late. He also rejected Cigna's theory that the February 14 Termination Notice nevertheless "became effective . . . the instant that the TRO [was] lifted," explaining that the February 14 Termination Notice "was ineffective" when issued and could not later become effective.

Moreover, because Cigna delivered the May 12 Termination Notice *after* Anthem delivered its notice of For Cause Termination, albeit on the same day, the May 12 Termination Notice also was ineffective. By the time Cigna acted, "[t]here no longer was a Merger Agreement in effect for Cigna to terminate." In so ruling, the Vice Chancellor rejected Cigna's argument that, for purposes of the Merger Agreement, "notices which are delivered on the same day must be treated as having been delivered simultaneously." Because the Merger Agreement's "plain language . . . does not say that," by the time Cigna delivered the May 12 Termination Notice, "Anthem already had terminated the Merger Agreement."

Cigna also complained that "Anthem exploited the TRO to gain a timing advantage over Cigna" and, therefore, it would be "inequitable" for the Vice Chancellor to deny Cigna payment of the Reverse

Termination Fee. This plea fell on deaf ears. As the Vice Chancellor reminded Cigna, he granted the TRO in light of Cigna's breach of the Efforts Covenants as part of its effort to sabotage the Merger Agreement: "Having previously sought to gain a timing advantage of its own in violation of the Merger Agreement, Cigna cannot now complain about the effects of a TRO that its own conduct made necessary." In fact, had Anthem not been so committed to the combination that it continued to resist the DOJ's efforts to enjoin the transaction, it could have invoked a For Cause Termination "long before" the Original Termination Date.

CONCLUSION

The unsuccessful combination of Anthem and Cigna most certainly was a "corporate soap opera" centered on the power struggle over which health insurance giant's CEO would lead the management of the combined enterprise. And once the Cigna leadership team became disenchanted with the direction of the integration planning for the transaction, according to Vice Chancellor Laster, Cigna breached its obligations to Anthem under the Efforts Covenants. Nevertheless, the Vice Chancellor ruled in *Anthem-Cigna Litigation* that Anthem was not entitled to monetary damages to redress this breach. By convincing the Vice Chancellor that it was more likely than not that the combination would have been enjoined in federal court regardless of Cigna's efforts, or lack thereof, Cigna managed to avoid liability. On the other hand, Cigna failed to prove that either (i) Anthem breached any of its obligations under the Efforts Covenants or (ii) Cigna was entitled to the Reverse Termination Fee. As a result, each of Anthem and Cigna were left to "bear the losses it suffered as a result of their star-crossed venture."