

PUBLICATION

Anthem Terminates Merger Deal with Cigna; Litigation Continues in Delaware Chancery Court

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On May 12, Anthem announced that it was terminating all efforts to complete its proposed merger with Cigna. The deal, announced back in 2015 and valued at \$54 billion, would have combined the country's second and fifth largest commercial health insurers.

Anthem's decision followed both an April 28 decision by the D.C. Circuit Court that affirmed a lower court ruling that enjoined Anthem from completing the merger and a subsequent decision by the Delaware Chancery Court, days later, that denied Anthem's request that Cigna be required to continue to support the proposed merger until Anthem had an opportunity to appeal the adverse D.C. Circuit ruling to the U.S. Supreme Court. Prior to the Delaware court ruling, Anthem had announced an intention to seek Supreme Court review of the D.C. Circuit decision, which was decided by a 2-1 vote.

Notably, while the parties' merger is now over, litigation continues in the Delaware Chancery Court over the "break-up" fee that was contained in the parties' merger agreement. Cigna maintains that it is owed the \$1.85 billion break-up fee set forth in the parties' merger agreement, plus damages, for Anthem's failure to complete the merger. Anthem, on the other hand, has publicly stated that "Cigna failed to perform and comply in all material respects with its contractual obligations [under the merger agreement]" and that "as a result, Cigna is not entitled to the termination fee" (nor any damages, one would imagine, at least according to Anthem). Given the significant amount of money in dispute, the Delaware litigation is not likely to end any time soon, and just like the merger litigation before it, the break-up fee litigation is likely to be precedent-setting as well. Stay tuned.