FRIED FRANK
M&A/Private Equity BRIEFING

September 8, 2020

Lessons from Anthem-Cigna*, Including Avoiding the Result of No Damages for Clear Breaches of a Merger Agreement*

In *In re Anthem-Cigna Stockholders Litigation* (Aug. 31, 2020), the Delaware Court of Chancery characterized the rise and fall of the proposed merger of equals of Cigna, Inc. and Anthem Corporation as a "corporate soap opera, [with] the members of executive teams at Anthem and Cigna play[ing] themselves [and] [t]heir battle for power span[ing] multiple acts." After the merger agreement was signed, Cigna "turned against the Merger" and created "roadblocks" to its consummation. Ultimately, a final injunction against the merger was issued on antitrust grounds, which resulted in termination of the merger agreement. Following a ten-day trial, Vice Chancellor Laster held, in a 310-page opinion, that Cigna had breached the merger agreement covenants under which it was obligated to try to consummate the merger, but that no damages were payable because the injunction likely would have been issued (and thus the merger would not have closed) anyway. The court also held that Anthem did not breach its covenants to try to obtain antitrust approval; and that, under the language of the merger agreement, Cigna was not entitled to a Reverse Termination Fee. The court summarized: "Neither side can recover from the other [and] [e]ach party must bear the losses it suffered as a result of their star-crossed venture."

Key Points

- **The decision is notable for the result that a party with "strikingly egregious" breaches of its obligations to try to consummate a merger was not liable in damages to its counterparty when those breaches contributed to the failure of a condition to closing.** Cigna implemented a communications strategy to spread anti-Merger messages; refused to engage in the integration planning process; and actively worked to undermine Anthem's regulatory strategy. The court acknowledged that, if Cigna had actually used its best efforts to support Anthem's antitrust defense strategy, the antitrust outcome might have been different. However, the court viewed it as "more likely than not" that the antitrust outcome would have been the same irrespective of Cigna's breaches and thus the condition would not have been satisfied anyway; therefore, damages were not payable by Cigna. We note that, where there is not a third party (such as a regulator) whose decisions cause a merger not to close, a party's violations of its efforts obligations, which lead to the failure of a closing condition, typically *should* result in damages being payable. One lesson from *Anthem-Cigna* is that, when a transaction is at risk of not receiving required regulatory approvals, the parties may wish to consider providing for liquidated damages for breaches of the merger agreement in order to avoid the result in *Anthem-Cigna*. (See "Practice Points" below).

- **The case underscores the potential vulnerability of "mergers of equals" to post-signing issues, particularly relating to leadership and succession.** As is the case in many MOEs, the respective CEOs of the merger parties both wanted to become the CEO of the combined company. Ultimately (after Anthem agreed to pay a substantial premium to Cigna's stockholders and issued a public bear hug letter revealing its proposal), Cigna's CEO relented. However, his lingering disappointment augured the ensuing drama. Just after signing the merger agreement, he communicated to colleagues: "Brain knows yes. Heart is heavy"; "still struggling to accept it"; and "[my] soul is still unsettled." Because MOEs involve two theoretically "equal" parties, with neither being clearly an acquiring or an acquired company, conflicts often arise during the integration planning period, especially over issues that involve power and emotion (most often, relating to who will run the combined company). We note that while this transaction was called an MOE, it had many features of an acquisition by Anthem (including a significant premium paid, a large cash component to the merger consideration, the Anthem CEO becoming the combined company's CEO, Anthem designating a majority of the combined company's board; and a number of non-reciprocal provisions). Another lesson from *Anthem-Cigna* is that calling a transaction an MOE when it is actually more an acquisition may create unrealistic expectations for the "target" company that can create serious conflict on post-signing integration issues. MOE parties should seek not only to set forth a resolution of succession and other sensitive issues in the merger agreement, but to ensure that there is a meeting of the minds on these issues that will endure post-signing. (See "Practice Points" below.)

Background

In July 2015, Anthem, Inc. and Cigna Corporation entered into a Merger Agreement (the "Agreement") that contemplated a merger of equals (the "Merger"). The Agreement provided that Anthem would pay Cigna's stockholders total consideration of over $54 billion, representing a premium of 38.4% over Cigna's unaffected market capitalization, payable 55% in cash and 45% in Anthem stock. On a pro forma basis, Anthem stockholders would own two-third, and Cigna stockholders one-third, of the equity of the combined company. The combined company board would have nine Anthem designees and five Cigna designees. Anthem's CEO ("A") would be the CEO of the combined company; Cigna's CEO ("C") would be the President and COO; and A and C would co-chair the integration planning committee.

The parties had argued strenuously over the leadership issue. Going into the negotiations, C expected that he and A would be co-CEOs, but A insisted that A would become the CEO. After A increased the premium payable to Cigna's shareholders, C agreed to become COO subject to A's agreeing to resign as CEO within a year and C being designated his successor. A refused but again increased the premium and then publicly released a bear hug letter outlining its proposal. C then agreed to the proposal--but with "a heavy heart" and "unsettled soul." Post-signing, the parties became increasingly adversarial, with the Cigna executive leadership team viewing the Anthem team as "acting like an acquirer" rather than a partner in a merger of equals. The Cigna team ultimately advocated against the Merger and actively opposed Anthem's efforts at integration planning and obtaining regulatory approval.

The US Department of Justice ("DOJ") brought suit to block the Merger on antitrust grounds. The US District Court for the District of Columbia (the "District Court") agreed with the DOJ and enjoined the Merger. The Court of Chancery issued a temporary restraining order that prohibited Cigna from terminating the Agreement pending Anthem's appeal of the District Court's decision. The US Court of Appeals for the District of Columbia Circuit (the "DC Circuit Court") affirmed the District Court's decision and the Agreement was terminated. (The DOJ, District Court and DC Circuit Court decisions are referred to collectively as the "Antitrust Decisions.")

In this litigation, Anthem was seeking expectation damages of $21.1 billion for alleged breaches by Cigna of its covenants in the Agreement to try to consummate the Merger. In turn, Cigna was seeking expectation damages of $14.7 billion for alleged breaches by Anthem of its covenants in the Agreement to try to obtain antitrust approval. Cigna also claimed entitlement under the Agreement to a Reverse Termination Fee of $1.8 billion. The Court of Chancery held that (i) Cigna breached its covenants, but no damages were payable because the Merger would not have closed anyway; (ii) Anthem did not breach its covenants; and (iii) Cigna was not entitled to the Reverse Termination Fee.

Merger Agreement Provisions

- **Reasonable Best Efforts Covenant.** The parties were obligated to use their "reasonable best efforts" to satisfy all of the conditions to closing and consummate the Merger. In Anthem's case, the covenant was subject to Anthem's not having to agree to any condition that would reasonably be expected to have a material adverse effect on the combined company (the "Burdensome Condition Exception").
- **Regulatory Efforts Covenant.** The parties were obligated to take "any and all actions" necessary to avoid impediments to the Merger that a governmental entity might assert under the antitrust or other applicable laws, so as to enable the closing to occur as promptly as practicable. In Anthem's case, the covenant was subject to the Burdensome Condition Exception.
- **Regulatory Cooperation Covenant.** The parties were obligated to cooperate when seeking regulatory approval (including in various ways that were specified in detail). They agreed that Anthem would have the authority, in consultation with Cigna, to take the lead in communicating with regulators and developing a regulatory strategy, including for purposes of any litigation. (The Reasonable Best Efforts, Regulatory Efforts and Regulatory Cooperation Covenants are referred to collectively as the "Efforts Covenants.")
- **No Injunction Condition.** The closing was conditioned on the absence of a final, non-appealable injunction that would prevent consummation of the Merger (the "No Injunction Condition").
- **Termination Right.** Either party could terminate the Agreement if (i) a "Legal Constraint" (such as a permanent injunction under the HSR Act or other antitrust laws) became final and non-appealable and blocked the Merger from closing, thereby causing the No Injunction Condition to fail (the "Legal Restraint Termination Right"); or (ii) the "Termination Date" had passed (the "Temporal Termination Right")--provided, that the terminating party's own failure to perform under the Agreement had not proximately caused the imposition of the Legal Restraint or the failure to close before the Termination Date.
- **Reverse Termination Fee.** Anthem would pay Cigna a fee of $1.8 billion if either party terminated the Agreement based on (i) the Legal Constraint Termination Right (so long as the legal constraint was a "Regulatory Constraint"); or (ii) the Temporal Termination Right, if the closing conditions other than the No Injunction Condition were satisfied at the time of termination.

Discussion

The Reasonable Best Efforts Covenant--what "reasonable best efforts" requires. The court explained that, generally, a reasonable best efforts covenant obligates a party "to take all reasonable steps to solve problems and consummate the transaction." A reasonable best efforts covenant "certainly" would be breached by a party's "working actively against" the merger and trying to prevent it from closing, the court stated. Evidence that a party wants to "get out of the deal" may "add credence to and corroborate" other facts demonstrating a failure to fulfill the efforts obligations, the court noted.

The Regulatory Efforts Covenant--what taking "any and all actions" requires. The Regulatory Efforts Covenant required that the parties take "any and all efforts" to remove "each and every impediment" to the Merger that a governmental entity might raise under applicable law. The court explained that, while a "reasonable best efforts" standard recognizes that "some extreme actions may be beyond a party's best efforts," an obligation to take any and all actions "does not admit exclusions." The court emphasized that, as drafted, the Covenant required this higher level of efforts to be used only with respect to "the discrete regulatory subject covered by the provision" and only in response to "a legal objection that a Governmental Entity could raise."

The Regulatory Cooperation Covenant--what a grant of authority over the regulatory process requires. The court stated that "a necessary corollary" to the grant of authority to Anthem to lead the regulatory approval process was that Cigna "was obligated to follow Anthem's lead and adhere to Anthem's strategy"--even if it did not like the strategy or thought that it would not be successful.

Cigna breached the Reasonable Best Efforts Covenant by (i) implementing a covert communications plan against the Merger and (ii) withdrawing from the integration planning. The court found that, when Cigna believed that Anthem had obtained "the upper hand" post-signing and the parties conflicted over integration planning, Cigna "definitively turned against the Merger." Together with a communications strategy firm, Cigna developed a "covert communications campaign to spread anti-Merger and anti-Anthem messages" (including that the Merger was "anti-competitive, anti-consumer and anti-innovative"; the closing might not occur; the regulatory process was behind schedule; and Cigna would do well on a standalone basis if the Merger did not occur). The campaign "was the exact opposite" of trying to do all things reasonably necessary to consummate the Merger, the court stated. Also, when Anthem started the process of scheduling interviews with Cigna executives about selecting the leadership team for the combined company, C and the Cigna team "reacted angrily and defensively," and then refused to address any integration matters other than those required for the combined company to be operational immediately after the closing. The court concluded that the purpose of Cigna's refusal to focus on integration past "Day 1 operations" was "to create near-term leverage over Anthem" so that it would accede to Cigna's wishes. The court observed that "[t]he integration planning that Anthem wanted to conduct was necessary to support the regulatory approval process and consummate the Merger." By covertly advocating against the Merger and withdrawing from the integration planning process, Cigna sought to "create problems" rather than, as required, to solve problems.

Cigna breached the Regulatory Efforts and Regulatory Cooperation Covenants by actively undermining Anthem's regulatory strategy. The court concluded that, after the Cigna team turned against the Merger, "they saw the failure to obtain regulatory approval as their ticket out." They "raised roadblocks" to regulatory approval by: refusing to provide information necessary for Anthem to make certain arguments to support its "efficiencies" defense; refusing to help identify buyers for divestitures; providing a potential buyer with only a one-page spreadsheet of information (after requiring a standard NDA agreement plus broader-than-usual standstill provisions); forcing Anthem to obtain confirmation from the DOJ of the viability of another buyer before it would provide information to the buyer; objecting that Anthem's divestiture proposal involved only Cigna's assets although that "had been the plan all along"; refusing to advocate to the DOJ in favor of a buyer; and in general refusing to advocate in favor of the divestiture plan Anthem submitted to the DOJ. The court found that, taken as a whole, these actions breached the Regulatory Efforts Covenant. Also, separately, Cigna's "deciding whether or not buyers were viable" and insisting that Anthem raise with the DOJ the viability of a buyer (and then itself contacting the DOJ to do so) breached the Regulatory Efforts and Regulatory Cooperation Covenants. In

addition, Cigna's opposition to a divestiture breached the Regulatory Efforts Covenant, which specified that, if the DOJ raised an objection to the Merger and a divestiture was necessary and appropriate, then Cigna was obligated to pursue the divestiture. Also, throughout the Antitrust Litigation, Cigna undermined Anthem's defense, including by opposing Anthem's efforts to mediate and taking litigation positions that supported the DOJ. In his deposition and at trial, C "gave vivid testimony that was a boon to the DOJ…[and] intentionally testified in a manner that would help the DOJ obtain a decision blocking the Merger." Cigna's opposition to the Merger was "so obvious that the District Court described it as the 'elephant in the courtroom'" and the District Court noted that Cigna had joined the DOJ in "warning against" the Merger and cited "the doubt sown into the record by Cigna itself."

The issue of "causation"--when a party's breach results in liability for failure of a closing condition. The court stated that, to guide the analysis of the issue of causation in this context, Delaware has adopted the framework set forth in the *Restatement of Contracts (Second)*. Under the *Restatement*, a party may have liability for damages for having breached its obligations under a merger agreement if the breach "contributed materially" to the failure of a closing condition. To establish that a party's breach of its efforts obligations contributed materially to the non-satisfaction of a closing condition, it is not necessary to show that the condition would have occurred "but for" the lack of cooperation; but only that it made satisfaction of the condition "less likely." "But," the court wrote, quoting from the *Restatement*, "if it can be shown that the condition would not have [been satisfied] regardless of the lack of cooperation, [then,] the failure of performance did not contribute materially to…[non-satisfaction of the condition,] the rule does not apply," and the breaching party would not be liable for damages. "The burden of showing this is properly thrown on the party in breach."

Cigna's breaches did not "contribute materially" to the failure of the No Injunction Condition. First, the court ruled that Anthem did not prove that Cigna's covert communications campaign against the Merger actually affected the DOJ, the District Court or the DC Circuit Court. The court observed that the District Court judge stated at one point, when Anthem referenced press reports about the parties' disputes, that he was not making any decision based on what he reads in the press and it would be inappropriate to do so; and Anthem's own counsel and expert both declined to say that they believed that the DOJ or the DC Circuit Court had been influenced by the campaign. The court concluded that Cigna's campaign only "provide[d] powerful evidence of Cigna's intent to oppose the Merger."

Second, the court found that Cigna's withdrawal from the integration planning process and active opposition to Anthem's antitrust defense *did* "contribute materially" to *certain aspects* of the Antitrust Decisions, but that a preponderance of the evidence indicated that it was more "more likely than not" that the Merger would have been enjoined on antitrust grounds irrespective of Cigna's actions. The court evaluated in detail each antitrust issue, the arguments Anthem made in defense, the alternative arguments that could have been made, and what effect Cigna's obstructions of the process had. The court concluded that Cigna's obstruction contributed materially to the failure of Anthem's defense with respect to *local* market antitrust concerns. However, the court found that, with respect to *national* market concerns, although Cigna's actions precluded Anthem from making certain arguments, Anthem had chosen to emphasize different arguments--as a "tactical choice" in the belief that they were more compelling and not as a result of Cigna's actions.

We note that, although Anthem and Cigna were, respectively, the second and third largest US insurance companies, it was not a foregone conclusion that the Merger was likely to be enjoined. Indeed, the record reflected that, around the time of signing of the Merger Agreement, both parties considered the likelihood of success on the antitrust front at about 70% or higher (so long as some divestitures were made and the

parties were aggressive with their antitrust defense). The court acknowledged that "Cigna's breaches were so extensive that it seems possible that if Cigna and its advisors had truly expended their best efforts to achieve regulatory approval,…[the Antitrust Decisions] could have come out differently." The court concluded, however, that it was "more likely than not…that the District Court and DC Circuit Court would have reached the same conclusion[s]…, even if Cigna had fulfilled its obligations under the Efforts Covenants." The court stated that two of Cigna's experts "submitted persuasive reports on that topic, [and] Cigna, therefore, met its burden of proof to show that the No Injunction Condition would have failed even if Cigna had fulfilled its obligations under the Efforts Covenants." The opinion did not discuss the content of these reports.

The court also held that Anthem did not breach the Regulatory Efforts Covenant. Cigna questioned the decisions Anthem made relating to the regulatory process and generally asserted that Anthem had chosen the wrong regulatory strategy, thereby causing failure of the No Injunction Condition. The court observed that the Agreement clearly allocated to Anthem the authority to "take the lead" in developing the regulatory strategy. The court found that Anthem made choices that were "reasonable"; "pursued the best regulatory strategy that it believed was available"; and "sought at all times to complete the Merger."

The court also held that Cigna was not entitled to the Reverse Termination Fee. Cigna claimed entitlement to the Reverse Termination Fee based on its having terminated the Agreement pursuant to the Temporal Termination Right. The court found that neither of Cigna's two attempted notices of termination were valid--in one case because the notice was delivered before the Termination Date (given that Anthem had previously validly extended the Termination Date); and, in the other case, because the notice was delivered while the Court of Chancery's temporary restraining order against termination of the Agreement by Cigna (so that Anthem could appeal the Antitrust Decisions) was still outstanding. Before Cigna delivered a third notice, Anthem provided notice to Cigna that it was terminating the Agreement based on Cigna's breaches--an event that did not trigger a right to the Reverse Termination Fee.

Practice Points

- **Special considerations in mergers of equals.** The key practice point with respect to MOEs is that, to avoid post-signing issues, the parties should try to identify, and set forth in the merger agreement the resolution of (or a clear and effective process for resolving), the critical issues relating to leadership, succession, regulatory strategy, integration planning, and so on. *Anthem-Cigna* demonstrates, however, that the parties also must seek to ensure that the resolutions of issues set forth in the merger agreement reflect a meeting of the minds that will endure post-signing. The Anthem-Cigna merger agreement clearly laid out the succession plan and clearly delegated authority to Anthem to develop and implement the antitrust strategy. The problem was that the parties' expectations (potentially, in part because the transaction was characterized as an MOE) and approaches (exacerbated by the CEOs' clashing styles--one, "a traditional CEO who valued hierarchy," and the other, a "charismatic visionary who inspired deep personal loyalty") continued to be different. The Cigna CEO never truly accepted that he would not have a strong leadership role going forward even though that is what the merger agreement provided and the CEOs never developed mutual trust. We note that delays in the regulatory approval process can exacerbate post-signing issues in MOEs by allowing them to fester over a long post-announcement pre-closing period. Transaction professionals working on a proposed MOE should never underestimate the amount of time that should be spent in discussions with the principals about transition issues in order to try to discover and resolve those issues (emotional, as well as business) that might not be readily resolved in the general integration process.

- **Limited application of the decision.** Clearly, a merger party should not work against consummation of the merger. Even when a party is considering termination of a merger agreement for any reason, until a termination, the party should continue to work toward closing so as not to breach its efforts obligations. In *Anthem-Cigna*, there was no liability because the failed condition involved a third party (whose approval was needed) and the court determined that the third party likely would not have approved regardless of Cigna's efforts. We note that the result might have been different if the antitrust issues had been less problematic on their face (involving the second and third largest insurance companies in the country combining to be the largest company).

- **To avoid the *Anthem-Cigna* result, consider liquidated damages for breaches.** *Anthem-Cigna* illustrates that it may be difficult to establish that a party's breach contributed materially to the failure of a closing condition. In any event, in may be difficult to prove expectation damages for breaches of a merger agreement. To address these issues, merger parties may wish to consider providing for a specified amount of liquidated damages in the event of breach of the agreement--especially when there are regulatory or other issues involving third parties that may prevent closing. If the amount of liquidated damages is specified, it might be based on a reasonable assessment of, for example, the expenses and opportunity costs associated with the failed merger process.

- **Willful breach provision.** The Anthem-Cigna merger agreement provided that termination of the agreement extinguished any liability on the part of any party except for damages for "Willful Breach." The agreement defined that term as conduct that "both constituted a material breach and which the breaching party subjectively knew would constitute a material breach." Thus, if the court had found that Anthem had *not* fulfilled all of its obligations under the agreement, Cigna still could not have recovered damages because the court found that Anthem acted in good faith to consummate the merger. (We note that if Cigna's breaches had resulted in damages, Anthem presumably *would* have recovered the damages given the egregious nature of Cigna's breaches.)

- **Efforts covenants drafting.** Although the litigation parties had not done so, the court carefully allocated each claim made against a party to the particular efforts obligation in the merger agreement that was most relevant to the claim. Thus, the court evaluated claims relating to the regulatory process under the Regulatory Efforts Covenant rather than the more general Reasonable Best Efforts Covenant. As a result, in the court's view, *no* efforts obligations applied with respect to aspects of the regulatory process that were not covered by the precise language of the Regulatory Efforts or Regulatory Cooperation Covenants (which language restricted the application of these Covenants to "legal impediments" that could be raised by governmental entities). Merger parties may wish to expressly state that, for example with respect to a regulatory process, any aspects of the process not falling within the coverage of the regulatory-related efforts covenant(s) would still be subject to the more general reasonable best efforts (or similar) covenant.

- **Authority to lead the regulatory process.** Merger parties should be mindful that the court was definitive in stating that, if one party is allocated the authority to lead the regulatory process, the other party (even with "consultation rights") generally is obligated to "follow and support" that strategy. Accordingly, any sensitive issues relating to the regulatory process or strategy should, to the extent possible, be dealt with before signing (although issues regarding providing a "road map" to the regulator must be taken into consideration and would weigh in favor of a less specific pre-signing plan for the regulatory process). The Anthem-Cigna situation underscores that, particularly when there are regulatory issues, it is critical that the parties understand each other's objectives, expectations, and

emotions; try to deal with each other in a manner that takes those factors into account; and foster a mutual commitment throughout the process to pursue the deal.

* * *

Fried Frank M&A/PE Group:

Amber Banks (Meek)	David J. Greenwald	Steven G. Scheinfeld
Bret T. Chrisope	Erica Jaffe	Robert C. Schwenkel
Andrew J. Colosimo	Randi Lally	David L. Shaw
Warren S. de Wied	Mark H. Lucas	Peter L. Simmons
Steven Epstein	Scott B. Luftglass	Matthew V. Soran
Christopher Ewan	Brian T. Mangino	Steven J. Steinman
Arthur Fleischer, Jr.*	Shant P. Manoukian	Gail Weinstein*
Andrea Gede-Lange	Philip Richter	Maxwell Yim

This Briefing is not intended to provide legal advice, and no legal or business decision should be based on its contents. If you have any questions about the contents of this Briefing, please call your regular Fried Frank contact or an attorney listed below:

Contacts:

New York

Amber Banks (Meek)	+1.212.859.8522	amber.meek@friedfrank.com
Andrew J. Colosimo	+1.212.859.8868	andrew.colosimo@friedfrank.com
Warren S. de Wied	+1.212.859.8296	warren.dewied@friedfrank.com
Steven Epstein	+1.212.859.8964	steven.epstein@friedfrank.com
Christopher Ewan	+1.212.859.8875	christopher.ewan@friedfrank.com
Arthur Fleischer, Jr.*	+1.212.859.8120	arthur.fleischer@friedfrank.com
David J. Greenwald	+1.212.859.8209	david.greenwald@friedfrank.com
Erica Jaffe	+1.212.859.8442	erica.jaffe@friedfrank.com
Randi Lally	+1.212.859.8570	randi.lally@friedfrank.com
Mark H. Lucas	+1.212.859.8268	mark.lucas@friedfrank.com
Scott B. Luftglass	+1.212.859.8968	scott.luftglass@friedfrank.com
Shant P. Manoukian	+1.212.859.8617	shant.manoukian@friedfrank.com
Philip Richter	+1.212.859.8763	philip.richter@friedfrank.com
Steven G. Scheinfeld	+1.212.859.8475	steven.scheinfeld@friedfrank.com
Robert C. Schwenkel	+1.212.859.8167	robert.schwenkel@friedfrank.com
David L. Shaw	+1.212.859.8803	david.shaw@friedfrank.com
Peter L. Simmons	+1.212.859.8455	peter.simmons@friedfrank.com
Matthew V. Soran	+1.212.859.8462	matthew.soran@friedfrank.com
Steven J. Steinman	+1.212.859.8092	steven.steinman@friedfrank.com
Gail Weinstein*	+1.212.859.8031	gail.weinstein@friedfrank.com
Maxwell Yim	+1.212.859.8214	maxwell.yim@friedfrank.com

Washington, D.C.

Bret T. Chrisope	+1.202.639.7445	bret.chrisope@friedfrank.com
Andrea Gede-Lange	+1.212.859.8862	andrea.gede-lange@friedfrank.com
Brian T. Mangino	+1.202.639.7258	brian.mangino@friedfrank.com

*Senior Counsel