

NYC's Bid To Halt Health Insurance Cos. Merger Denied

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Tuesday, November 14, 2006 --- A federal judge has denied the City of New York's bid for a temporary restraining order that would have halted a proposed union between health insurance companies Group Health Inc. and HIP Foundation Inc., a decision that may have triggered the first step toward new health insurance providers for city employees and retirees.

U.S. District Judge Kenneth M. Karas decided not to issue the requested order after hearing oral arguments on Tuesday.

"While we are disappointed in the judge's denial of our temporary restraining order application, this is only the first step," said Michael A. Cardozo, New York City's Corporation Counsel. "It is the city's continued view that the new company's 90-plus percent market share would result in a virtual monopoly, and have serious ramifications on health care afforded to City employees. We look forward to demonstrating these facts to the court at the appropriate time."

"At the same time," Cardozo added, "given the possibility of a merger, the city, to protect itself against the large cost increases it believes will occur should the merger go forward, has no choice but to issue a RFP ("request for proposal" or solicitation) for new health care providers who can offer comparable—but less expensive—health care benefits."

New York City filed an antitrust suit Monday seeking temporary, preliminary and permanent injunctive relief to prevent the merger between the two companies. The city's complaint invoked the Clayton Act and the Sherman Act as well as the New York General Business Law.

While the city's complaint refers to the proposed combination of GHI and HIP as a "merger," Ilene Margolin, GHI's senior vice president for consumer affairs, took issue with that particular term.

Margolin said the plan to meld GHI and HIP would produce an "affiliation under a common parent." She said that the two companies provided different services—GHI is a preferred provider organization (PPO) while HIP is a health maintenance organization (HMO).

"They're totally different," according to Margolin.

GHI "strenuously disagrees" with the city's assertion that the proposed deal

would run afoul of antitrust rules, Margolin said.

But the city contends that the proposed union would result in a monopoly which would allow GHI/HIP to jack up prices at will, without having to worry about being undercut by competitors.

“The merger will result in HIP controlling GHI and will create a monopoly in the New York metropolitan area market for low-cost health insurance that is purchased by the City and its employee unions, together with the city’s employees and retirees,” the city’s complaint warns. “A merger of GHI and HIP would eliminate all competition in the relevant market and would allow the merged entity to exercise its resulting monopoly power by substantially raising the prices it charges without fear of any market constraint.”

The New York City Law Department said that the merger had the potential to drive up health care costs by “tens of millions” and monopolize the public health care sector.

Corporation Counsel Cardozo pointed out that upwards of 90% of the city’s employees as well as their dependants and retirees use either HIP or GHI. The ability to choose between the two plans is an asset to those consumers, according to Cardozo.

“If HIP and GHI merge, there will be no competition between them,” Cardozo said.

The city’s lawsuit asks the court to decree that the proposed merger violates antitrust laws, stop the merger and bar GHI and HIP from combining their “health insurance business or assets,” and award the city its attorneys’ fees and costs.

The case is *The City of New York v. Group Health Incorporated et al.*, in the U.S. District Court for the Southern District of New York.