



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Press Release

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For Immediate Release

**NEW YORK CITY SUES HIP AND GHI,
SEEKING TO ENJOIN THE TWO HEALTH INSURANCE
COMPANIES FROM MERGING**

MERGER COULD RESULT IN POTENTIALLY TENS OF MILLIONS MORE IN HEALTH CARE COSTS EACH YEAR TO THE CITY AND ALLOW ONE COMPANY TO CONTROL MORE THAN 90 PERCENT OF THE MUNICIPAL HEALTH CARE MARKET AND 100 PERCENT OF THE “LOW-COST” MUNICIPAL MARKET

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New York, Nov. 13, 2006 – Invoking the protection of federal and state antitrust laws, New York City filed suit in Manhattan federal court today seeking to prevent HIP and GHI, the two New York health insurance giants, from merging and creating a virtual monopoly in the public service health care sector. If the merger were allowed to take effect, the newly formed company would control more than 90 percent of the City's municipal health care market and 100 percent of the “low-cost” municipal market, resulting in substantially higher premiums at astronomical costs to the City.

“More than 90 percent of city employees, their dependents, and retirees use HIP or GHI,” noted Corporation Counsel Michael A. Cardozo. “The City pays 100 percent of the basic health care premium and some employees pay only for additional ‘riders,’ such as drug coverage. Most City employees select them, so as not to have to pay higher fees – and they value the ability to switch between the plans. The presence of competition between these two companies results in lower premiums than they would otherwise charge.

“If HIP and GHI merge, there will be no competition between them,” Cardozo added. The merged entity could raise prices substantially, because the next competitor is still far more expensive. Employees who pay for the additional coverage could see an increase in payroll deductions for enhancements, and the City, which today pays more than \$3 billion annually in basic medical premiums, would have to pay millions and millions more each year for City health care costs – money that comes out of all New Yorkers' pockets. Therefore, it is imperative that this merger be prevented.”

Cardozo added that the merged entity would control about 93 percent of the municipal healthcare marketplace, and offer health care coverage to 560,000 employees and retirees. Together with their dependents, the coverage would include over 1.2 million people.

The health benefits offered through the HIP and GHI programs comprise the “low-cost” municipal health benefits market – or one that has no payroll deductions to the employee. If one looked at the situation from just the “low-cost” picture, the newly formed company would control 100 percent of this marketplace, since HIP now has a 23 percent share of the relevant market and GHI has a 77 percent share. [Editor's Note: HIP is the larger overall company, though, so GHI would be merging into it.]

The City filed its legal complaint in U.S. District court for the Southern District this morning, and the case has been assigned to Federal Court Judge Kenneth M. Karas. The complaint seeks relief under the

federal Clayton and Sherman Acts, and New York State's Donnelly Act, all statutes that, in the City's view, make mergers like this illegal. The judge will next hear oral argument on a temporary restraining order (TRO) tomorrow at 11 a.m. at the federal courthouse at 500 Pearl St. in Manhattan, Room 21-D.

A TRO serves as a "speed bump" of sorts. If granted, it maintains the status quo – or the merger doesn't proceed – until the judge can hear longer, more detailed legal arguments on the next legal step, called a preliminary injunction (PI). If a PI is then granted, it acts as a more permanent "stop sign" or "road block," again preserving the status quo until the full case is heard, and decided by, the judge. "As the two sides are set to merge on Nov. 15th, it became imperative for the City to act quickly," noted Corporation Counsel Cardozo.

The City has prepared extensive arguments to buttress its arguments that the merger would result in an illegal monopoly. For example, each percentage point increase in the insurance premiums charged by HIP and GHI will cost the City an additional \$27.5 million annually. So if health care costs were to go up, for example, 5 percent, it would cost the City \$112.5 million annually – money that could much be better spent on other City services.

With health care costs expected to rise in any event, the absence of any competition between the two companies raises the real likelihood that rates would go up substantially. This is particularly true, since the other health care providers charge premiums well in excess of those charged by HIP and GHI, despite numerous efforts by the City over the last few years to interest them in offering lower-cost health care plans similar to HIP and GHI.

"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," noted Cardozo.

Published reports have indicated that, if the merger occurs, the merged company will seek permission from the State Legislature to convert from their present non-profit status to a public company, a development which, if permitted by the State, could result in still higher premiums.

The City's legal papers include: 1) a complaint (the formal document that begins the case), 2) a memorandum of law (that discusses the relevant statutes and cases), and 3) numerous affidavits in support of the application for a temporary restraining order and preliminary injunction. These documents are available to reporters by contacting the Law Department's Media & Communications Office at (212) 788-0400 or media@law.nyc.gov.

Frank R. Lichtenberg, Courtney C. Brown Professor of Business at the Columbia University Graduate School of Business, submitted an affidavit that concludes that the merger would permit the combined HIP-GHI to raise its prices by substantially more than 5 percent for a period of more than one year. He finds that premiums paid for other companies' plans are 26 percent to 111 percent higher than the premiums paid for HIP and GHI plans. Thus, even if the merged entity raised the premiums on its plans by only 5 percent or 10 percent – at an annual cost of more than \$27.5 million to the city for each percentage increase – its plans would be significantly less expensive than other plans currently offered by the City. "So it would be free to impose these higher costs upon the City with no consequences while also wiping out the 'low-cost' health care offering," noted Cardozo.

Mark Page, Director of the New York City Office of Management and Budget, also submitted an affidavit in support of the City's case asserting that the City is projected to spend \$3.1 billion on health insurance in the next fiscal year, excluding any rate increases that would result from the merger, and that 93 percent of this amount will go to the HIP or GHI. Page points out that there are 35 other employers whose health insurance benefits are administered by the City's Health Benefits Program – including the New York City Housing Authority, and numerous museums and libraries, and that they will spend approximately \$654 million on health insurance next year.

"A merger of HIP and GHI would eliminate the only competitive restraint on their ability to raise prices," Page writes in his affidavit. "The HIP/GHI merger would be a merger to monopoly, and would likely result in substantial additional costs to the City. ... Such higher premiums would have an adverse effect not only on the City's budget, but also on the compensation of the City's employees, as it is they who pay, directly or indirectly, for these benefits."

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