



United States v. Anthem/Cigna, 2017 U.S. Dist. LEXIS 23613 (D.D.C. 2017)

Topics Covered: Antitrust

Outcome: Very Favorable

Issue

The issue in this case was whether a consolidation of large health insurance companies, Anthem and Cigna Corporation (CIGNA), will diminish competition in the health insurance industry, thereby violating the antitrust laws.

AMA Interest

The AMA opposes consolidation in the health insurance industry, which may result in anti-competitive markets.

Case Summary

Anthem, one of the largest health insurance companies in the United States, seeks to acquire CIGNA, also one of the largest insurers in the country. To effectuate their opposition to the proposed merger, the AMA and numerous state and specialty medical societies undertook various initiatives to assist the United States Department of Justice (DOJ) and several state attorneys general (AGs) in their legal action to prevent the merger.

The United States v. Anthem/Cigna complaint includes a claim that the merger between Anthem and Cigna would lead to below-market rate payments for physicians and hospitals and a consequent reduction in patients' access to medical care – a monopsony claim. This claim was included in the Anthem/Cigna complaint largely as a result of persuasion of the DOJ/AGs by the AMA, along with state and specialty medical societies.

As part of their effort to persuade the DOJ/AGs to include the monopsony claim, the medical societies surveyed their members to learn how the Anthem/Cigna merger might affect physicians' medical practices. The medical societies then shared the results of these surveys with the DOJ/AGs. The medical societies also suggested that the DOJ/AGs call certain medical society members as possible witnesses to support the monopsony claim.

Anthem/Cigna subpoenaed the AMA and the medical societies of the states which brought the suit against Anthem/Cigna for documents. The AMA and the affected state medical societies retained legal counsel to assist in responding to these subpoenas.

Further, the DOJ subpoenaed a Colorado physician, who the AMA and the state medical societies had identified as a possibly helpful witness, for deposition. Anthem/Cigna also subpoenaed this physician's medical practice to produce documents.

On February 8, 2017, the trial court found that the merger would stifle competition and enjoined it. The court discounted Anthem's argument that the merger could be justified through an "efficiency" argument, based on the price reductions the merged company might be able to impose on health care providers. However, the court did not reach the monopsony claim. Anthem appealed, with its argument focused on the efficiency argument.

On April 28, 2017, by a two to one decision, the District of Columbia Court of Appeals affirmed, finding that, if the merger was prima facie anticompetitive (a point undisputed on appeal), it could not be justified through efficiencies which might be achieved through the merger. Furthermore, it held, the evidence did not support Anthem's claim that it would pass along cost savings to its customers. The dissent would have reversed the trial court and remanded for a determination of the monopsony claim.

Anthem petitioned the Supreme Court for *certiorari*. Subsequently, it asked to have the appeal dismissed. The case is now concluded

Litigation Center involvement

The Litigation Center paid the bills of the attorneys retained to assist the AMA, the state medical societies, and the Colorado physician with the various discovery requests served upon them. In addition, the Litigation Center filed an amicus brief in the D.C. Circuit to oppose the merger and seek affirmance of the lower court decision.

United States Court of Appeal for the D.C. Circuit brief