

UNITED STATES SENATE JUDICIARY COMMITTEE

FIELD HEARING

**SENATOR ARLEN SPECTER
SENATOR ROBERT CASEY**

**HEARING ON THE PROPOSED MERGER OF
INDEPENDENCE BLUE CROSS AND HIGHMARK, INC.**

**NATIONAL CONSTITUTION CENTER
PHILADELPHIA, PA**

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STATEMENT OF LAWRENCE M. OTTER

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Good morning Senators Specter and Casey. Thank you for this opportunity to address some of the issues relating to the proposed merger of the two largest health insurers in Pennsylvania, Independence Blue Cross based in Philadelphia, Pennsylvania and Highmark, based in Pittsburgh. I have represented the interests of citizens of the Commonwealth of Pennsylvania since 1994 when I became an Assistant Counsel for the

Pennsylvania Department of Health. My legal portfolio included the Bureau of Managed Care, which together with the Pennsylvania Insurance Department licenses health insurers in this Commonwealth. In 1999, I was hired by Attorney General Mike Fisher to create a Health Care Unit to address the growing concerns of Pennsylvanians disillusioned with their health insurance companies. In my time with the Attorney General, the Health Care Unit received significant complaints from a broad cross section of persons insured by IBC and Highmark, Inc.

For the record I am opposed to this merger because it will only increase the dominant power these two entities have over health care in Pennsylvania. That power has bled the citizens, hospitals, doctors and employers. It only increases the cost of healthcare in the regions where these two behemoths operate. No good can come of this proposed merger.

The United States Department of Justice has established a bright line test in judging health insurers market share for anti trust purposes. That line is 30% market share. Both of these companies have crossed that line years ago. In fact, both exceed 50% in their respective markets and nothing has been done to curb their avarice to the detriment of every consumer and provider of health care in the Commonwealth.

IBC is an economic predator. IBC assimilates almost every health care provider in its license area with a “take no prisoners” attitude. To quote the Borg (See: Star Trek, The Next Generation), “Resistance is futile.” IBC smashes any resistance to their pricing schedules with its take it or leave it health care provider contracts. IBC promises economic ruin on any doctor or hospital that does not toe the Blue line. IBC does not hesitate to use its dominant market power or its vast array of lawyers to bring outliers to heel and drain their bank accounts in the process. IBC destroys any competitor that dares to enter the Philadelphia market. It is more logical for these two giants to compete against each other than merge into a bloated entity with even more economic power. IBC already gouges consumers with ever increasing premiums. IBC trampled community hospitals in Bucks and Chester Counties to my personal knowledge. Only Children’s Hospital of Philadelphia has the clout and international reputation to deal with IBC on almost even terms. Other community hospitals and Health Systems are damaged everyday by the provider contract forced upon them by IBC.

One of the particularly egregious practices of both of these insurers is their treatment of claims for persons with addiction and alcoholism problems. This issue became 10% of the workload of the Health Care Unit. Pennsylvania is the only state in the union with a significant statutory

mandate for addiction treatment in health insurance policies written in this state. (See: ACT 106, 40 Pa. C.S.A. §908-1, et seq.). IBC and Highmark have short changed patients diagnosed with these diseases for more than 15 years. In many cases, IBC's and Highmark's denials of treatment, have been the direct cause of death of fathers, mothers, children, husbands, wives, sisters, brothers, union members, police officers, firefighters, office workers, licensed professionals and so on. The list is endless. In my capacity as a Senior Deputy Attorney General, I began to actively enforce Act 106 on behalf of the chief law enforcement officer of the Commonwealth. In late Fall, 2001 I recommended to the Attorney General that there was sufficient evidence against various health insurance companies, including IBC and Highmark, to bring a legal action to enforce compliance with Act 106 in the face of the overall refusal of every health insurance company and their subcontractor for "behavioral health" to follow the law in the Commonwealth. The Pennsylvania Insurance Department refused or was unable to enforce the law through its regulatory and oversight powers. Unfortunately, for both the citizens and me, I quickly discovered that there was no political will to do what is right and just for the citizens of the Pennsylvania. The Attorney General would not go after his campaign finance chair, (Fred DiBona, the late chair of IBC), insurance company PAC

contributors and their minions. The Insurance Department failed to execute the law. The government whose highest duty is to protect the citizens of the Commonwealth failed its citizens miserably. Neither the state regulators nor the Attorney General has the courage to check this outrageous behavior.

Another concern that should bother every employer in Pennsylvania is the deliberate cover up by IBC and Highmark of the real meaning of the so called “hold harmless” clause in their subscriber and provider agreements. There is absolutely no language in IBC’s provider contracts that would allow a doctor or hospital to set aside the “Enrollee Hold Harmless” clause when IBC elects to refuse to pay-for a “Covered Service” based on their claim the care isn’t “Medically Necessary”. Highmark and IBC will tell you that it merely prevents double billing. They will never say that it will prevent one of its subscribers from self paying for a “covered service”. They will say this charge is “absurd”. The public record, especially in Act 106 substance abuse cases, is contrary to their public pronouncements. They will never tell you the subscriber that you have forfeited your right to freely and independently contract and pay for “covered services” which IBC and Highmark refuse to pay for “certified” or medically necessary care that they not your doctor deems necessary. They will never tell you, the employer, that you are violating ERISA.

The campaign contributions and lobbying muscle of the “Blues” is legendary in Harrisburg. Rest assured the wheels have already been greased in Harrisburg to allow this merger to go forward. With all due respect to the new legislative proposals, they will fail. It may look good on paper but the regulators will not enforce the law. It will only become worse if the Federal Government allows this merger to move forward. Instead of looking kindly on this merger, the Judiciary Committee should insist that the Justice Department to commence anti trust action against both of these companies. They have monopoly power, crossed over the stated Department of Justice anti trust threshold and should be broken up instead of allowing the merger.

With all due respect to my former colleagues in Strawberry Square, the Office of Attorney General is conspicuous in its absence in reference to legal actions against either IBC or Highmark or any health care entity. Both IBC and Highmark control over 50% in their current markets and will control 53% of the entire Pennsylvania market place if the merger goes forward. The Pennsylvania Office of Attorney General lacks a state Anti Trust law to even begin an inquiry.

One of the tenets of a free and open marketplace is that competition keeps prices down and quality up. What happens, then, when competitors merge, effectively reducing and maybe eventually eliminating competition?

Pennsylvania could stand a little health care insurance competition to drive down the price for consumers. Right now there is none in Southeastern and Western Pennsylvania. If this merger goes forward, the entire Commonwealth is placed in serious economic jeopardy with no guarantee of improved health care. This duopoly becomes a monopoly.

Respectfully submitted,

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