

\$1 BILLION



The amount a class action settlement in April could cost the National Football League for allegedly failing to protect players from health risks associated with head injuries

RISK MANAGEMENT

Athletes play hardball over concussions

Increased litigation may lead to cuts in coverage

BY STEPHANIE GOLDBERG

Increased awareness about the long-term effects of concussions could lead some insurers to exclude head trauma from policies for professional athletes, experts say.

Additionally, as a fresh wave of concussion-related litigation hit several professional sports leagues last month, pricing for professional athletes' insurance could rise, they say.

While the 3rd U.S. Circuit Court of Appeals in Philadelphia approved a class action settlement in April that could cost the National Football League \$1 billion for allegedly failing to protect players from health risks associated with head injuries, retired NFL players in mid-July also sued Riddell Inc. for allegedly failing to warn them that company's helmets wouldn't prevent brain injuries.

Former professional wrestlers

See **CONCUSSIONS** page 27

HEALTH INSURERS

HEALTH INSURER MERGERS IN JEOPARDY AFTER SUIT CITES COMPETITIVE CONCERNS

Justice Department slams Anthem-Cigna, Aetna-Humana deals

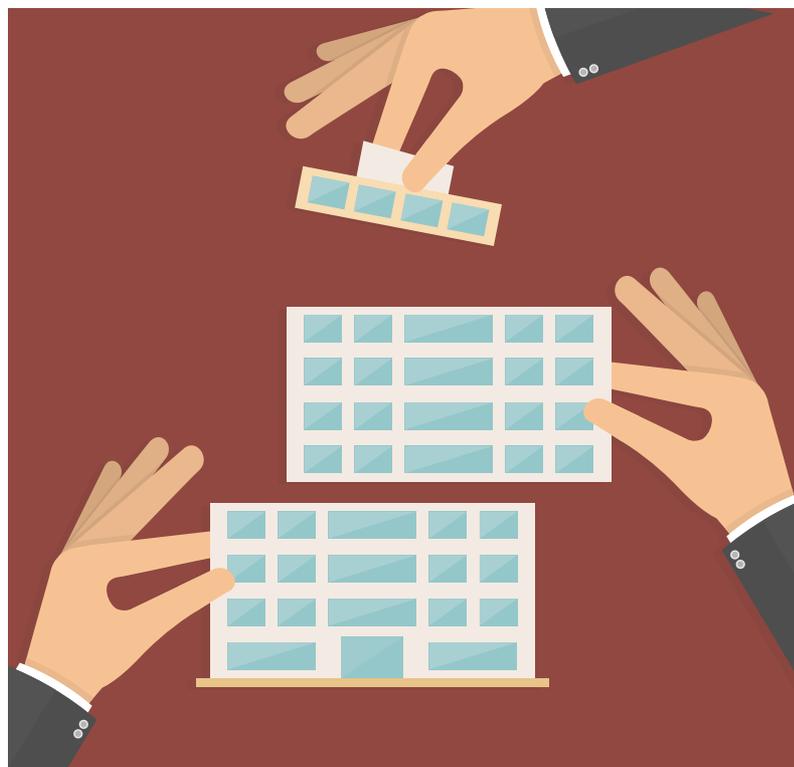
BY SHELBY LIVINGSTON

The U.S. Justice Department's strong objections to merging Anthem Inc. with Cigna Corp. and Aetna Inc. with Humana Inc., outlined in federal litigation filed last month, have left significant doubt about either deal being completed.

Many analysts hold that the \$37 billion Aetna-Humana tie-up has a stronger chance of winning approval than the \$54 billion Anthem-Cigna union.

"We believe that a settlement including divestitures is still probable, and in fact, we think that Aetna has a relatively strong case should this eventually make it to court,"

See **LITIGATION** page 28



MERGER BATTLE

U.S. Justice Department litigation seeks to block the \$54 billion merger of Anthem Inc. and Cigna Corp. and the \$37 billion merger of Aetna Inc. and Humana Inc. on anti-competitive grounds. It alleges that:

- Allowing the mergers would hurt employers, consumers, doctors and hospitals.
- The Anthem-Cigna deal would likely harm competition and raise prices in the employer market.
- The Aetna-Humana deal would reduce competition in the Medicare Advantage market.
- The deals would reduce competition for those seeking health insurance in the public exchanges.

Insurers' counteroffensive touts lower costs, sufficient choice

BY SHELBY LIVINGSTON

Immediately following the U.S. Justice Department's July decision to fight the billion-dollar mergers of Anthem Inc. and Cigna Corp., as well as Aetna Inc.

and Humana Inc., the insurers launched a counterattack.

In a joint statement, Aetna and Humana vowed to "vigorously defend" their union, which they hold would benefit consumers — particularly Medicare Advantage

enrollees — with better-quality and lower-cost health insurance.

Aetna and Humana also took aim at the Justice Department's analysis, arguing there is enough competition in Medicare to support the merger, that Medicare

Advantage and traditional Medicare do compete despite the Justice Department's assertion otherwise, and that divestitures would solve any competition

See **REACTION** page 28



Q&A: FRANCIE STARNES

New CEO of Worldwide Broker Network discusses her plans for the organization

PAGE 12

COMMENTARY

Companies must update risk management approach to reflect new global exposures

PAGE 14

NEWS IN BRIEF

EEOC files pregnancy discrimination lawsuit against Brown & Brown

PAGE 8



SPECIAL REPORT

MARINE, AVIATION & TRANSPORTATION RISKS

Buyers find ample capacity and favorable prices in the marine hull and cargo insurance market; drone regulations better define opportunities for insurers; truck telematics drive major changes and improved safety on the open road; and a boatload of data

PAGE 18



LITIGATION

Continued from page 1

Barclays P.L.C. analysts said in a research report.

However, Stephen Zaharuk, New York-based senior vice president at Moody's Investors Service Inc., said "the deck seems to be stacked against" the Anthem-Cigna combination.

"We see the likelihood of any settlement or win for the companies in court as slim given the political nature of the outcome and the tone of the communication" from the Justice Department, Leerink Partners L.L.C. Managing Director and Analyst Ana Gupte said in a research note after the Justice Department litigation.

In lawsuits filed July 21 in U.S. District Court for the District of Columbia, the Justice Department objected to the potential deals on anticompetitive grounds and suggested that there were no circumstances in which it would change its mind.

If allowed, the mergers that are "unprecedented in their scope and in their scale" would likely "threaten to increase insurance premiums, to reduce benefits, to lower the quality of health care and to slow innovation," Principal Deputy Associate Attorney General William Baer said during a news conference about the litigation.

Aetna, Humana and Anthem quickly responded to the Justice Department's decision with vows to fight (see related story), each arguing that the mergers would benefit consumers and not harm competition.

Cigna, on the other hand, seemed less enthusiastic in its initial response, stating that it would evaluate its options and that it expected the transaction to close in 2017, "if at all."

On Friday, however, Cigna President and CEO David Cordani attempted to dispel concerns about the insurer's commitment, saying it is "fully engaged" in the

merger process with Anthem. He also said that in case the merger is blocked, Cigna will have significant capital to seek growth opportunities elsewhere.

As of late last Friday, Anthem was the only insurer to file a response to the Justice Department's litigation. Anthem also has asked for a speedy antitrust trial, though government attorneys late last week urged the court not to rush the complex case. Aetna and Humana also motioned for an expedited trial due to merger agreement deadlines, according to court documents.

Competition objections

The Justice Department's objections to the Aetna-Humana combination center largely on reduced competition in the Medicare Advantage market that would result from the merger. Humana, the second-largest Medicare Advantage provider by covered members, competes with Aetna, the fourth-largest, in nearly 90% of the counties where Aetna offers Medicare Advantage.

The Justice Department holds that Medicare Advantage does not compete with traditional Medicare. Aetna and Humana disagree.

Barclays analysts said in a research note after the Justice Department suit that the federal agency did not make a compelling argument why the two markets don't compete, adding that both cater to seniors and offer the same base benefits.

However, the fact that seniors have the choice between the two products "doesn't mean they are substitutes," said Thomas Greaney, an antitrust expert formerly with the Justice Department's antitrust division who now is co-director of the Center for Health Law Studies at St. Louis University School of Law.

Medicare Advantage has distinct characteristics, such as greater benefits, lower premiums and a cap on annual out-of-pocket costs, according to the Justice Depart-

ment's lawsuit.

At the heart of the Justice Department's objections to the Anthem-Cigna union is reduced competition for health insurance and administrative services in the national and local employer markets.

The Justice Department also argues that eliminating Cigna as a competitor to Anthem would reduce innovation in moving toward value-based care in the health insurance industry — a major movement today to reduce health care costs.

"That's been a factor in some antitrust merger cases, the fact that one company that's merging ... is a maverick," Mr. Greaney said. In that case, "you're losing the one that puts price and innovation pressure on the others."

The Justice Department also argued that the mergers would harm competition that holds down prices on public health insurance exchanges, and Mr. Baer said divestitures proposed until that point were "incomplete and impractical" and unlikely to solve any antitrust concerns.

Aetna Chairman and CEO Mark Bertolini countered during a CNBC interview July 21 that Aetna has provided "two separate bidders with complete bids, signable contracts that would buy the whole business from us" in each of the problem markets the Justice Department pinpointed.

Even so, sources said post-merger divestitures often fail to restore competition.

Decided in the courts

Ultimately, it's not the Justice Department's call whether the five largest national health insurers become three, with UnitedHealth Group Inc. being the largest and not involved in the mergers, said Andrea Murino, a Washington-based partner and co-chair of the antitrust group at Goodwin Procter L.L.P.

It's unclear how U.S. District Court Judge John D. Bates, who

has been assigned to the cases, will rule.

However, federal antitrust enforcers have "been on a hot streak" of winning antitrust cases lately, Ms. Murino said.

In the past two years, several large companies have abandoned merger plans after the Justice Department filed suit. They include Halliburton Co. and Baker Hughes Inc., General Electric Co. and AB Electrolux, and National CineMedia Inc. and Screenvision L.L.C.

Still, federal courts ruled against the Federal Trade Commission twice this year in cases brought against hospital mergers in Chicago and Pennsylvania. The FTC has appealed both.

There's also political tension in merger cases, Ms. Murino said. Antitrust law appears to be at odds with the Affordable Care Act, which seems to encourage consolidation and collaboration in the health care sector, she said.

"The DOJ will tell you that — and the FTC would say this, too — that there's no tension between the ACA and the antitrust laws, but I bet if you asked (the health insurers') lawyers, they would say there very much is," Ms. Murino said.

Litigation could take months, and the losing party could appeal the decision, Mr. Greaney said.

Observers say the outcome of the litigation may not be known until next year.

If the deals are blocked, Anthem would owe Cigna a \$1.85 billion breakup fee and Aetna would owe Humana a \$1 billion breakup fee, according to their merger agreements.

Anthem and Aetna have the cash to pay those fees, sources say, and the fees would give Cigna and Humana opportunities to expand, Mr. Zaharuk said.

The insurers could turn their sights to "less transformational" deals with smaller health insurers, as they've done in the past, said Mark Rouck, Chicago-based senior director with Fitch Ratings Inc.

cerns.

Aetna Chairman and CEO Mark Bertolini added an exclamation point to the written statement in a CNBC interview, in which he said Aetna and Humana "are willing to take this (litigation) all the way to the very end."

Anthem also pledged to fight for its merger with Cigna, and filed a response in the U.S. District Court for the District of Columbia arguing that the combination "will increase competition and result in cost savings, efficiencies and other benefits that will make health care more affordable and accessible to consumers."

Anthem also said its takeover of Cigna would allow expansion of where it sells insurance through public health insurance exchanges.

Cigna, however, has recently played the role of the reluctant partner.

In an unenthusiastic response to the Justice Department's litigation, Cigna said it "is currently evaluating its options consistent with its obligations under the agreement" and doesn't believe the deal will close until next year at the earliest, "if at all."

On Friday, however, Cigna President and CEO David Cordani downplayed the health insurer's stance.

Most industry stakeholders and other observers lauded the litigation.

"The prospect of reducing five national health insurance carriers to just three is unacceptable," American Medical Association President Dr. Andrew W. Gurman said in a statement. "Given the mergers' potential to significantly compromise market competition, the AMA strongly supports the antitrust challenge from federal regulators."

"The Department of Justice recognized that the health — both physical and financial — of the American people is at stake," Topher Spiro, vice president of health policy at the nonpartisan Center for American Progress, said in a statement. The mergers "would have irreversibly transformed and destabilized the health care landscape at a critical juncture."

But a spokeswoman for health insurance industry lobbying group America's Health Insurance Plans said in a statement that "mergers among health plans can deliver significant benefits" and urged federal regulators to set their sights on "anti-competitive provider mergers and the soaring cost of pharmaceuticals driven in part by anti-competitive pricing tactics."