

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 88-C-20186
)	
ROCKFORD MEMORIAL CORPORATION and)	Judge Stanley Roszkowski
SWEDISHAMERICAN CORPORATION,)	
)	Filed: 6/1/88
Defendants.)	

VERIFIED COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendants named herein and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Clayton Act, 15 U.S.C. § 25, and Section 4 of the Sherman Act, 15 U.S.C. § 4, to prevent and restrain the violation by defendants, as herein alleged, of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 1 of the Sherman Act, 15 U.S.C. § 1.

2. Rockford Memorial Corporation ("Rockford Memorial") transacts business, maintains offices, and is found within the Northern District of Illinois.

3. SwedishAmerican Corporation ("SwedishAmerican") transacts business, maintains offices, and is found within the Northern District of Illinois.

4. Rockford Memorial and SwedishAmerican executed a Memorandum of Understanding on September 29, 1987, and an Amendment to the Memorandum of Understanding on January 31, 1988, in which they agreed to form a new corporation that would be the sole member of and control both entities. The United States alleges that this merger would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 1 of the Sherman Act, 15 U.S.C. § 1.

II.

DEFINITIONS

5. "HHI" means the Herfindahl-Hirschman Index, a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2600 (30 squared + 30 squared + 20 squared + 20 squared = 2600). The HHI, which takes into account the relative size and

distribution of the firms in a market, ranges from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size. The index increases as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

6. "Rockford area" means the City of Rockford, Illinois and the area surrounding it, including substantially all of Winnebago County and the northeastern portion of Ogle County.

III.

DEFENDANTS

7. Rockford Memorial is made a defendant herein. Rockford Memorial is a not-for-profit corporation organized and existing under the laws of the state of Illinois. It maintains its principal office in Rockford, Illinois. Rockford Memorial is engaged in a variety of health care related enterprises, including owning and operating a general acute care hospital in Rockford, Illinois, with 490 state inventoried hospital beds. In its fiscal year ending February 28, 1987, Rockford Memorial had net revenues from operations of about \$73 million.

8. SwedishAmerican is made a defendant herein. SwedishAmerican is a not-for-profit corporation organized and existing under the laws of the state of Illinois. It maintains its principal office in Rockford, Illinois. SwedishAmerican is

engaged in a variety of health care related enterprises, including owning and operating a general acute care hospital in Rockford, Illinois, with 427 state inventoried hospital beds. In its fiscal year ending May 31, 1987, SwedishAmerican had net revenues from operations of about \$74 million.

IV.

TRADE AND COMMERCE

9. General acute care hospitals provide a wide variety of services in connection with the diagnosis, care, and treatment of patients. They provide some of these services to patients in an outpatient setting. General acute care hospitals, however, usually provide most of their services for, and derive the bulk of their revenues from, the diagnosis, care, and treatment of patients who, because of the seriousness of their illness or condition, require at least an overnight hospital stay. The services provided to patients admitted to general acute care hospitals for at least an overnight stay are referred to herein as "acute inpatient hospital services."

10. The provision of acute inpatient hospital services is distinct from the provision of services by other types of health care facilities, such as clinics, ambulatory surgery centers, physicians' offices, nursing homes, or rehabilitation or psychiatric hospitals. Most other types of health care facilities do not treat patients who require an overnight stay, and none provide services that are comparable to the acute

inpatient hospital services provided by general acute care hospitals. Patients are usually admitted to a general acute care hospital only when they cannot be safely, effectively, or economically treated by other types of health care facilities. Sellers and purchasers of acute inpatient hospital services do not view the services offered by other types of health care providers as good substitutes for acute inpatient hospital services.

11. The provision of acute inpatient hospital services by general acute care hospitals constitutes a line of commerce, or relevant product market, for antitrust purposes. In 1987, total gross revenues from the provision of acute inpatient services in the Rockford area were approximately \$160 million.

12. Persons in need of acute inpatient hospital services must be admitted to a general acute care hospital by a physician who has admitting privileges at the hospital. In order to minimize travel time, admitting physicians prefer to treat and visit patients at general acute care hospitals that are close to their offices. Patients also desire to be hospitalized in their local community so that their families or friends can visit conveniently. Geographic markets for the provision of acute inpatient hospital services are therefore highly localized.

13. Over 90 percent of the residents of the Rockford area who require acute inpatient hospital services use general acute care hospitals located in the Rockford area. These patients account for about 75 percent of discharges from the general acute care hospitals located in the Rockford area. In the Rockford area, sellers and purchasers of acute inpatient hospital services do not view hospitals outside the Rockford area as good substitutes for the provision of acute inpatient services.

14. The Rockford area constitutes, for antitrust purposes, a section of the country, or relevant geographic market, for the provision of acute inpatient hospital services.

15. Rockford Memorial and SwedishAmerican compete in the provision of acute inpatient hospital services in the Rockford area. They operate the two largest general acute care hospitals in the Rockford area, which has only three such hospitals.

16. The market for the provision of acute inpatient hospital services in the Rockford area currently is highly concentrated by any measure of capacity or output of the competitors in the market, and concentration would increase substantially as a result of the merger of Rockford Memorial and SwedishAmerican. Using state inventoried bed capacity for providing acute inpatient hospital services, Rockford Memorial and SwedishAmerican have about 39 percent and 33 percent of

the beds respectively. The merger of the two firms would create a firm with a market share of about 72 percent and would increase the HHI for the market by about 2584, to 5976. The merger would result in similarly high increases in concentration if other measures of the firms' market shares of acute inpatient hospital services were used, such as admissions, inpatient days, or inpatient revenues.

17. Entry into the provision of acute inpatient hospital services in the Rockford area is unlikely to occur for several reasons. First, there is excess bed capacity in the Rockford area, which creates an economic disincentive to such entry. Second, anyone wishing to construct a new general acute care hospital in the Rockford area must apply for, and make the necessary showings to obtain, a Certificate of Need permit from the state of Illinois, including demonstrating that there is a need for additional hospital beds in the area. This showing would be difficult to make since the state has determined that there is presently excess bed capacity in the Rockford area. Third, even if a new entrant could obtain state approval to construct a new general acute care hospital in the Rockford area, successful entry into the provision of inpatient hospital services there would involve substantial time and expense to plan and construct a new general acute care hospital.

18. Rockford Memorial and SwedishAmerican regularly purchase substantial quantities of equipment and supplies from sources outside of Illinois for use in connection with their provision of acute inpatient hospital services in the Rockford area. Rockford Memorial and SwedishAmerican regularly receive substantial revenues from governmental and private payers (e.g., insurance companies) located outside Illinois in payment for acute inpatient hospital services provided by their hospitals in the Rockford area. Rockford Memorial and SwedishAmerican are each engaged in interstate commerce and their activities are in the flow of, and substantially affect, interstate commerce.

V.

VIOLATIONS ALLEGED

19. Under the Memorandum of Understanding, dated September 29, 1987, and amended January 31, 1988, between Rockford Memorial and SwedishAmerican, the two corporations agreed to form a new corporation that would be the sole member of and control both entities. As a result of this merger one corporation will control two of the three general acute care hospitals in the Rockford area that are now independent competitors.

20. The effect of the consolidation between Rockford Memorial and SwedishAmerican may be substantially to lessen competition in the provision of acute inpatient hospital

services in the Rockford area in violation of Section 7 of the Clayton Act in the following ways, among others:

- a. Actual and potential competition between Rockford Memorial and SwedishAmerican will be eliminated;
and
- b. Competition generally in the provision of acute inpatient hospital services in the Rockford area market may be substantially lessened.

21. By entering into the Memorandum of Understanding, dated September 29, 1987, and amended January 31, 1988, Rockford Memorial and SwedishAmerican have agreed to restrain trade unreasonably in the provision of acute inpatient hospital services in the Rockford area in violation of Section 1 of the Sherman Act.

22. This agreement, if carried out, will have the following effects, among others:

- a. Actual and potential competition between Rockford Memorial and SwedishAmerican will be eliminated;
and
- b. Competition generally in the provision of acute inpatient hospital services in the Rockford area market will be substantially lessened.

PRAYER

WHEREFORE, plaintiff prays:

1. That pending final adjudication of the merits of the foregoing Verified Complaint, a preliminary injunction be issued against the defendants preventing and restraining each of them and all persons acting on their behalf from taking any action, either directly or indirectly, in furtherance of the proposed merger of Rockford Memorial and SwedishAmerican;

2. That the proposed merger of Rockford Memorial and SwedishAmerican be adjudged to be in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 1 of the Sherman Act, 15 U.S.C. § 1;

3. That defendants be permanently enjoined from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to combine Rockford Memorial and SwedishAmerican;

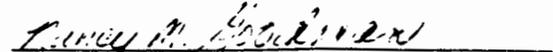
4. That plaintiff have such other and further relief as the Court may deem just and proper; and

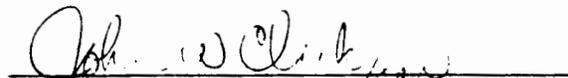
5. That the plaintiff recover the costs of this action.

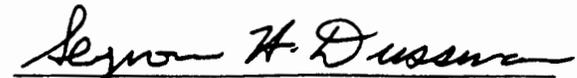

CHARLES F. RULE
Assistant Attorney General

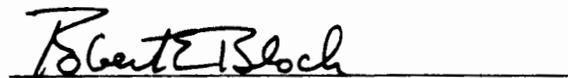

RICHARD S. MARTIN


MICHAEL BOUDIN

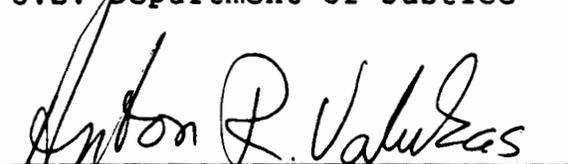

NANCY M. GOODMAN


JOHN W. CLARK


SEYMOUR H. DUSSMAN
Attorneys
U.S. Department of Justice
555 4th Street, N.W.
Washington, D.C. 20001
202/724-8311


ROBERT E. BLOCH


FRED E. HAYNES
Attorneys, Antitrust Division
U.S. Department of Justice


ANTON R. VALUKAS
United States Attorney

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