

File

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
NORTHEASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

NORTH DAKOTA HOSPITAL ASSOCIATION;
THE BISMARCK HOSPITAL ASSOCIATION
OF BISMARCK, NORTH DAKOTA;
DAKOTA MEDICAL FOUNDATION;
GARRISON MEMORIAL HOSPITAL;
MCKENZIE COUNTY MEMORIAL HOSPITAL
FOUNDATION;
MERCY HOSPITAL OF DEVILS LAKE;
THE MERCY HOSPITAL OF WILLISTON;
ROLLA COMMUNITY HOSPITAL;
ST. ALEXIUS MEDICAL CENTER;
ST. JOHN'S HOSPITAL;
ST. JOSEPH'S HOSPITAL OF DICKINSON;
ST. JOSEPH'S HOSPITAL CORPORATION;
ST. LUKE'S HOSPITAL ASSOCIATION;
TRINITY MEDICAL CENTER; and
UNITED HOSPITAL,

Defendants.

Civil Action No. 82-83-131

Filed: August 25, 1983

Equitable and
Legal Relief Sought

COMPLAINT

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

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 4 of the Sherman Act (15 U.S.C. §4), to prevent and restrain the continuing violation by the defendants, as hereinafter alleged, of Section 1 of the Sherman Act (15 U.S.C. §1); and under Section 4A of the Clayton Act (15 U.S.C. §15a), in order to recover damages suffered by plaintiff as a result of said violation.

2. The defendants all maintain their principal offices, transact business and are found within the District of North Dakota.

II

THE DEFENDANTS

3. The North Dakota Hospital Association (hereinafter "the Association") is made a defendant herein. It is a nonprofit corporation organized and existing under the laws of North Dakota with its principal place of business in Grand Forks, North Dakota. The Association is a trade association for the hospital and nursing home industries in North Dakota. It represents and has represented hospitals and nursing homes in many facets of their operations and activities, including the matters complained of herein. Approximately 54 hospitals throughout North Dakota are members of the Association.

4. Each corporation named below is made a defendant herein. Each defendant is a nonprofit corporation organized and existing under the laws of North Dakota. Each has its principal place of business and operates a hospital facility in the city indicated.

<u>Defendant Corporation</u>	<u>City</u>
The Bismarck Hospital Association of Bismarck, North Dakota	Bismarck, North Dakota
Dakota Medical Foundation	Fargo, North Dakota
Garrison Memorial Hospital	Garrison, North Dakota
McKenzie County Memorial Hospital Foundation	Watford City, North Dakota
Mercy Hospital of Devils Lake	Devils Lake, North Dakota
The Mercy Hospital of Williston	Williston, North Dakota
Rolla Community Hospital	Rolla, North Dakota
St. Alexius Medical Center	Bismarck, North Dakota
St. John's Hospital	Fargo, North Dakota
St. Joseph's Hospital of Dickinson	Dickinson, North Dakota
St. Joseph's Hospital Corporation	Minot, North Dakota
St. Luke's Hospital Association	Fargo, North Dakota
Trinity Medical Center	Minot, North Dakota
United Hospital	Grand Forks, North Dakota

III

CO-CONSPIRATORS

5. Various persons, not named as defendants herein, have participated as co-conspirators in the offense hereinafter alleged, and have performed acts and made statements in furtherance thereof.

IV

TRADE AND COMMERCE

6. Hospitals in North Dakota, including the hospitals that are the subject of this complaint, provide medical and surgical services and products which are vital to the health and comfort of, among others, American Indians in and near North Dakota. Services and products provided by hospitals include major and minor surgery, nonsurgical therapies, obstetrical and gynecological care, diagnostic testing, administration of medications, and rehabilitative care.

7. The United States, through its agency the Indian Health Service (hereinafter "IHS"), a bureau of the Health Resources and Services Administration within the Department of Health and Human Services, operates a program of comprehensive health services for eligible American Indians and Alaskan natives in accordance with the Snyder Act, 25 U.S.C. §13, and other federal statutes. Under this program, IHS furnishes funds to pay for medical and surgical services and products provided to American Indians by hospitals in North Dakota,

including the hospitals which are the subject of this complaint. IHS pays with checks drawn on the United States Treasury for such services and products. Payments by IHS to hospitals in North Dakota were approximately \$2.5 million in 1982.

8. IHS has from time to time entered into contracts with hospitals that establish the terms and conditions for the provision of medical and surgical services and products to American Indians.

9. Hospitals in North Dakota, including the hospitals that are the subject of this complaint, purchase substantial quantities of drugs, equipment, and supplies from vendors outside of North Dakota. These drugs, equipment, and supplies are used in the provision of medical and surgical services and products to, among others, American Indians. Payments for these drugs, equipment, and supplies and for the services and products provided by hospitals cross state lines.

10. The activities of the defendants and co-conspirators, which are the subject of this complaint, were in and had a substantial effect on interstate commerce.

V

VIOLATION ALLEGED

11. Beginning in or about August 1982, and continuing to the date of filing of this complaint, the defendants and co-conspirators have engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. §1), as alleged more specifically herein. This violation is continuing and will continue unless the relief hereinafter prayed for is granted.

12. In August 1982 IHS requested hospitals in North Dakota and other states, including the hospitals that are the subject of this complaint, to negotiate contracts with IHS establishing the terms and conditions for the provision of medical and surgical services and products (including drugs) to American Indians. IHS sought to include in these contracts provisions which would have set the level of charges billed to IHS for such services and products at rates lower than the hospitals' usual private rates. Such contracts would have represented a departure from IHS's previous practice of paying for such services and products at the hospitals' usual private rates.

13. After learning of IHS's request, the defendants and co-conspirators have engaged in the unlawful combination and conspiracy alleged herein. This combination and conspiracy has

consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators, the substantial terms of which were to reduce or eliminate price and other forms of competition among themselves by jointly refusing to lower the level of charges billed to IHS for services and products provided to American Indians.

14. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators have done those things which they combined and conspired to do, including:

- (a) advising hospitals in North Dakota not to sign contracts proposed by IHS;
- (b) jointly deciding that the contracts proposed by IHS would be rejected unless such contracts included provisions maintaining the level of charges billed to IHS at rates equal to the hospitals' usual private rates; and
- (c) jointly refusing to accept contracts proposed by IHS.

VI
EFFECTS

15. The aforesaid combination and conspiracy has had the following effects, among others:

- (a) charges to IHS for medical and surgical services provided to American Indians have been fixed, maintained, and established at noncompetitive levels;
- (b) competition in North Dakota for the sale to IHS of medical and surgical services for American Indians has been restrained, suppressed, and eliminated; and
- (c) the United States has been denied the benefits of free and open competition in North Dakota in the purchase of medical and surgical services for American Indians.

16. As a result of the aforesaid combination and conspiracy, and the acts of defendants and co-conspirators in furtherance thereof, the United States has been compelled to pay substantially higher charges for medical and surgical services provided to American Indians than would have been the case but for the illegal conduct complained of herein, and has been injured and financially damaged in an amount which is presently undetermined.

PRAYER

WHEREFORE, the plaintiff:

A. Prays that the aforesaid combination and conspiracy among the defendants and co-conspirators be adjudged and decreed to be in unreasonable restraint of trade in violation of Section 1 of the Sherman Act.

B. Prays that the defendants, their officers, directors, partners, committees, agents, employees, successors, and attorneys, and all other persons acting or claiming to act on their behalf, be enjoined from continuing or renewing the aforesaid combination and conspiracy and from entering into any similar agreement or concert of action.

C. Demands judgment against defendants for the damages suffered by it due to the aforesaid combination and conspiracy in violation of the antitrust laws, as provided for in Section 4A of the Clayton Act, 15 U.S.C. §15a, together with such interest thereon as is permitted by law, and the costs of this suit.

D. Prays that the court grant such other relief as it deems appropriate.

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