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UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

Plaintiff,

v.

MORGAN DRIVE AWAY, INC.;  
NATIONAL TRAILER CONVOY, INC.;  
TRANSIT HOMES, INC.

Defendants.

Civil No. 1781-74

Filed: December 5, 1974

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 against the above-named defendants to obtain equitable relief and to recover actual damages, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the defendants by the United States of America under Section 4 of the Sherman Act, as amended (15 U.S.C. §4), in order to prevent and restrain continuing violations of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§1 and 2), as hereinafter alleged; and under Section 4A of the Clayton Act (15 U.S.C. §15a), to recover actual damages sustained as a result of defendants' violations of Sections 1 and 2 of the Sherman Act, as hereinafter alleged.

2. Each of the defendants transacts business within the District of Columbia.

## II

### DEFINITIONS

3. As used herein, the term:

- (a) "Mobile home" means a transportable structure built on a chassis or wheeled undercarriage and designed to be used as a dwelling, with or without a permanent foundation. The term includes what are known as "single-wides" and "double-wides."
- (b) "For-hire transportation of mobile homes" means the pick-up, transportation and delivery of mobile homes for compensation (1) by motor carriers authorized by federal or state agencies to serve the general public on a common carrier basis, or (2) by motor carriers authorized by federal or state agencies to serve particular shippers on a contract carrier basis.
- (c) "Person" means any natural person, firm, partnership, association or corporation.
- (d) "Mobile home authority" means authority to engage in for-hire transportation of mobile homes according to certificates of public convenience and necessity or similar operating licenses or rights issued by the Interstate Commerce Commission or various state agencies under applicable law.

(e) "Continental United States" means the 48 contiguous United States and Alaska. Transportation "within the continental United States" includes both transportation across state lines and transportation wholly within individual states.

### III

#### DEFENDANTS

4. Morgan Drive Away, Inc. (hereinafter referred to as "Morgan") is hereby made a defendant herein. Morgan is a corporation organized and existing under the laws of the State of Indiana, with principal offices in Elkhart, Indiana. Morgan is a wholly-owned subsidiary of Consolidated Leasing Corporation of America, a Delaware corporation. Morgan is the largest motor carrier engaged in for-hire transportation of mobile homes within the continental United States, with total revenues in 1973 of about \$38.4 million.

5. National Trailer Convoy, Inc., (hereinafter referred to as "National") is hereby made a defendant herein. National is a corporation organized and existing under the laws of the State of Oklahoma, with principal offices in Tulsa, Oklahoma. National is a wholly-owned subsidiary of PepsiCo, Inc., a Delaware corporation. National is the second largest motor carrier engaged in for-hire transportation of mobile homes within the continental United States, with total revenues in 1973 of about \$27.2 million.

6. Transit Homes, Inc. (hereinafter referred to as "Transit") is hereby made a defendant herein. Transit is a corporation organized and existing under the laws of the State of Michigan, with principal offices in Greenville,

South Carolina. Transit is the third largest motor carrier engaged in for-hire transportation of mobile homes within the continental United States, with revenues in 1973 of about \$8.3 million.

#### IV

##### CO-CONSPIRATORS

7. Various persons not made defendants herein, participated as co-conspirators in the violations herein-after alleged and performed acts and made statements in furtherance thereof.

#### V

##### TRADE AND COMMERCE

8. About nine million persons presently live in approximately 3.9 million mobile homes throughout the continental United States. Mobile homes are manufactured by about 368 firms in more than 888 factories in the continental United States. In 1973, sales of mobile homes amounted to about \$4.4 billion. In that year, sales of mobile homes accounted for about 91% of all single family dwellings sold at prices below \$20,000, and for about 69% of all single family dwellings sold at prices below \$30,000. The average price of a mobile home is about \$7,770.

9. The distribution and transportation of mobile homes includes "initial moves" from the factory to the dealer, and "secondary moves" from the dealer to the individual owner. Subsequent "secondary moves" may be made from one site to another at the request of the owner. In 1973, more than 560,000 mobile homes were transported in "initial moves," an increase of 250% over the 1966 figure.

10. The pick-up, transportation and delivery of mobile homes, within the general distribution pattern described in paragraph 9 hereinabove, is accomplished almost exclusively by specially designed trucks. The average cost of such trucks is about \$7,000.

11. Most initial moves of mobile homes are made by the manufacturers of such homes, who maintain company-owned or controlled fleets of trucks. The transportation of mobile homes in initial moves by manufacturer-owned or controlled fleets grew from about 68.1% of all such transportation in 1963 to approximately 82.6% in 1967.

12. Motor carriers engaged in for-hire transportation of mobile homes provide the other significant share of the transportation of mobile homes in initial moves. Such motor carriers handled about 29.7% of all initial moves in 1963 and about 15.1% in 1967. Moreover, such motor carriers provide most of the transportation of mobile homes in secondary moves.

13. Motor carriers engaged in for-hire transportation of mobile homes generally do not own the trucks operated for their account. Rather, such motor carriers rely on individuals who own or lease trucks and who, as independent contractors, lease or sublease their trucks to the motor carriers. These individuals are commonly known in the industry as "owner-operators." The motor carrier and the owner-operator enter into a lease agreement which typically runs for thirty days and is automatically renewed at the end of each successive thirty-day period unless either party wishes to terminate. Owner-operators are paid a commission based on a fixed percentage of the gross tariff according to the mileage of the haul.

14. Motor carriers engaged in for-hire transportation of mobile homes, including Morgan, National and Transit, can and do perform their services both by operating across state lines and by operating solely within individual states. As a condition precedent to interstate operations, a motor carrier must obtain a certificate of public convenience and necessity from the Interstate Commerce Commission (hereinafter referred to as the "ICC") (49 U.S.C. §306). The certificate issued by the ICC to the motor carrier specifies with particularity the nature of the authority granted.

15. Motor carriers already holding ICC certificates of public convenience and necessity may file protests with the ICC against applications of other persons for mobile home authority which would conflict with that held by the protesting motor carriers. The usual basis for such protests is that the service being provided is adequate to the existing shipper demand within the scope of the application.

16. Most states require motor carriers to secure certificates of public convenience and necessity from their own regulatory commissions to transport mobile homes from origin points to destination points within the state. Commonly, motor carriers already holding state-issued certificates of mobile home authority may, under state procedures, protest applications for conflicting authority. State commissions usually base the resolution of such protests on whether the service being provided is adequate to the existing shipper demand within the scope of the application.

17. Morgan, National and Transit have each obtained broad federal and state mobile home authorities. Morgan, National and Transit since the early 1950's have each held ICC authority to engage in for-hire transportation of mobile homes in secondary moves across state lines anywhere within the continental United States. Morgan and National also hold ICC authority to engage in for-hire transportation of mobile homes in initial moves across state lines from most significant factory sites within the continental United States. Transit holds ICC authority to engage in for-hire transportation of mobile homes in initial moves across state lines from many significant factory sites within the continental United States. Morgan and National have statewide authority to transport mobile homes within most individual states of the continental United States. Transit has statewide authority to transport mobile homes within many individual states of the continental United States. Morgan, National and Transit have sufficient ICC and state mobile home authorities to give one or more of them standing to protest virtually all applications of other persons for mobile home authority.

18. Motor carriers engaged in for-hire transportation of mobile homes across state boundaries pursuant to ICC certificates of public convenience and necessity are subject to ICC rate regulation. The Interstate Commerce Act imposes a duty on motor carriers to establish, observe and enforce just and reasonable rates (49 U.S.C. §316(b)) and confers upon the ICC certain powers to regulate the compliance of motor carriers with such duty (49 U.S.C. §316(e)).

19. The Interstate Commerce Act expressly provides, however, that the ICC may not in any manner or for any purpose regulate the rates charged for intrastate motor carrier transportation, i.e., services performed between origin and destination points wholly within individual states (49 U.S.C. §316(e)).

20. Any two or more motor carriers engaged in for-hire transportation of mobile homes across state boundaries may apply to the ICC for approval of a rate agreement and a rate-making conference (49 U.S.C. §5b(2)). Upon approval of the ICC, the making and carrying out of a rate agreement according to its provisions and in conformity with the terms and conditions prescribed by the ICC are relieved from the operation of the antitrust laws (49 U.S.C. §5b(9)). However, the ICC may approve only such rate agreements as expressly and unconditionally reserve to each party to each such agreement the free and unrestrained right to take independent action either before or after any determination arrived at under such agreements and their procedures (49 U.S.C. §5b(6)(9)). Moreover, no duty is imposed by law on any motor carrier to become a party to any such agreements whether or not approved by the ICC.

21. State regulation of rates charged by motor carriers engaged in for-hire transportation of mobile homes wholly within individual states varies greatly. The majority of the individual states of the continental United States neither provide for state authorization of rate agreements, nor for state prescription of rates.

22. On or about December 10, 1962, the Mobile Housing Carriers Conference, Inc., (hereinafter referred to as the "MHCC"), received ICC approval to operate as a rate-making

conference according to the general privileges and limitations described in paragraph 20 hereinabove. Since that time, Morgan, National and Transit, among other motor carriers, have actively participated as members of the MHCC. MHCC member motor carriers have regularly met and on occasion rates have been published on behalf of the MHCC membership.

23. In 1971 motor carriers engaged in for-hire transportation of mobile homes within the continental United States earned gross revenues in excess of \$71 million for such services.

24. Morgan, National and Transit are the three largest motor carriers engaged in for-hire transportation of mobile homes within the continental United States. These motor carriers, commonly known in the industry as the "Big Three," together have accounted for more than 85% of all revenues earned from for-hire transportation of mobile homes since 1965.

25. The United States Government has been a substantial purchaser of the transportation services of motor carriers engaged in for-hire transportation of mobile homes. One of the principal Government purchasers of such services has been the United States military acting through the Military Traffic Management Command (hereinafter referred to as "MTMC"). Motor carriers are eligible to make secondary moves of mobile homes on behalf of the United States military when they are authorized by the ICC or under state law to engage in for-hire transportation of mobile homes and when their rate tender has been accepted by MTMC.

26. Motor carriers eligible to transport mobile homes for the United States military submit their rate tenders at individual military installations which they desire to serve. Such rate tenders may be made under Section 22 of the Interstate

Commerce Act (49 U.S.C. §22) which permits motor carriers to offer lower rates to agencies of the United States than those commercial rates offered by them to the general public. Section 22 rates may not be approved or disapproved by the ICC. The policy of MTMC is to afford the motor carrier offering the lowest rate at any base the first opportunity to transport all available moves. Carriers whose rates are the same are given the opportunity to share equally in the transportation of mobile homes for the United States military.

27. Since 1968, the United States military has purchased about \$68.3 million in for-hire transportation of mobile home services from the defendants. During that time Morgan, National and Transit have received more than 85% of all monies paid by the United States military for all such service.

28. For-hire transportation of mobile homes within the continental United States affects interstate commerce and is in interstate commerce.

## VI

### VIOLATIONS ALLEGED

#### Violation of Section 1 of Sherman Act--

#### Combination and Conspiracy in Restraint of Trade

29. Beginning sometime in the early 1950's, the exact date being to the plaintiff unknown, and continuing up to and including the date of the filing of this complaint, the defendants and co-conspirators have engaged in a combination and conspiracy in unreasonable restraint of the aforesaid trade and commerce in for-hire transportation of mobile homes in violation of Section 1 of the Sherman Act (15 U.S.C. §1).

30. The aforesaid 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 have been:

- (a) to exclude other persons from for-hire transportation of mobile homes;
  - (b) to limit and restrict the growth of other persons engaged in for-hire transportation of mobile homes;
  - (c) to coerce other persons engaged in for-hire transportation of mobile homes to join the MHCC and to raise their rates to the level of rates charged by Morgan, National, and Transit;
  - (d) to coerce other members of the MHCC to relinquish their right of independent action to charge rates for the transportation of mobile homes lower than the rates charged by Morgan, National, and Transit;
  - (e) to fix and stabilize the rates to be charged by Morgan, National, and Transit for the transportation of mobile homes wholly within individual states of the continental United States, without authorization of state law;
  - (f) to induce and coerce other motor carriers engaged in for-hire transportation of mobile homes to charge the same rates as Morgan, National, and Transit for the transportation of mobile homes wholly within individual states of the continental United States, without authorization of state law;
- and

- (g) to eliminate competition between Morgan, National and Transit for the services of their drivers and field organization personnel.

31. In furtherance of the aforesaid combination and conspiracy, the defendants and co-conspirators have done those things which they combined and conspired to do, including among other things:

- (a) deprived other persons applying for mobile home authority of meaningful access to, and of fair hearings before, federal and state agencies and courts by:

- (1) protesting virtually all such applications, without regard to the merits;
- (2) inducing others to protest such applications, without regard to the merits;
- (3) jointly financing such protests, and jointly providing personnel including attorneys and employees to aid in the conduct of such protests;
- (4) using tactics whose purpose and effect were to deter, delay and increase the costs of applications of other persons for mobile home authority;
- (5) refraining from protesting one another's applications for mobile home authority, for the purpose of qualifying each other to protest applications of other persons for mobile home authority;
- (6) providing, procuring, and relying upon testimony which they knew to be false and misleading in agency proceedings concerning such applications;

- (b) interfered with the lawful business pursuits of other persons engaged in for-hire transportation of mobile homes by threats of substantial rate reductions;
- (c) fixed the commissions to be paid to owner-operators performing transportation services for each of the defendants Morgan, National and Transit at uniform and noncompetitive levels; and
- (d) refrained from offering employment to each other's field organization employees such as terminal agents and district managers.

Violation of Section 2 of Sherman Act--  
Combination and Conspiracy to Monopolize

32. Beginning sometime in the early 1950's, the exact date being to the plaintiff unknown, and continuing up to and including the date of the filing of this complaint, the defendants and co-conspirators have engaged in a combination and conspiracy to monopolize the aforesaid trade and commerce in for-hire transportation of mobile homes in violation of Section 2 of the Sherman Act (15 U.S.C. §2).

33. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators to acquire, maintain and to exercise the power to control the entry into and the prices charged in the aforesaid trade and commerce in for-hire transportation of mobile homes.

34. In furtherance of the aforesaid combination and conspiracy, the defendants and co-conspirators have done those things which they combined and conspired to do, including, among other things, those actions set forth in paragraphs 30 and 31 of this complaint, which are

realleged with the same force and effect as though set forth here in full.

Violation of Section 2 of Sherman Act--

Monopolization

35. Beginning some time in the early 1950's, the exact date being to the plaintiff unknown, and continuing up to and including the date of the filing of this complaint, the defendants have monopolized the aforesaid trade and commerce in for-hire transportation of mobile homes in violation of Section 2 of the Sherman Act (15 U.S.C. §2).

36. In the monopolization of the aforesaid trade and commerce, the defendants and co-conspirators have jointly maintained and exercised the power to control the entry into and the prices charged in the aforesaid trade and commerce in for-hire transportation of mobile homes, by, among other things, those actions set forth in paragraphs 30 and 31 of this complaint, which are realleged with the same force and effect as though set forth here in full.

VII

EFFECTS

37. The aforesaid violations by the defendants have had the following effects, among others:

- (a) persons engaged in or seeking to engage in for-hire transportation of mobile homes have been unlawfully excluded from the business or unlawfully restrained in their efforts to enlarge their businesses;
- (b) the amount of motor carriage service, including the number and size of motor carriers, available for for-hire transportation of mobile homes has been arbitrarily and unreasonably restricted;

- (c) rates charged for for-hire transportation of mobile homes within the continental United States have been set and maintained at arbitrary and unreasonably high levels; and
- (d) competition generally in trade and commerce in for-hire transportation of mobile homes has been arbitrarily and unreasonably suppressed.

### VIII

#### INJURIES SUSTAINED

38. During the period covered by this complaint the plaintiff purchased substantial quantities of mobile home transportation service from the defendants for the purpose of relocating military and other Government personnel.

39. As a result of the illegal combination, and conspiracy and monopolization alleged herein, plaintiff has been compelled to pay substantially higher prices for mobile home transportation service than it would have paid but for the violations of the antitrust laws alleged herein.

40. As a result of the illegal combination, conspiracy and monopolization alleged herein, plaintiff has been injured and financially damaged by defendants in an amount which is presently undetermined.

41. Plaintiff had no knowledge of the aforesaid combination and conspiracy and monopolization until some time subsequent to October 28, 1971. Plaintiff could not have uncovered said combinations and conspiracies and monopolization at an earlier date by the exercise of due diligence because they had been fraudulently concealed by defendants.

PRAYER

WHEREFORE, the plaintiff prays:

1. That the Court adjudge and decree that each of the defendants Morgan, National and Transit has engaged in an unlawful combination and conspiracy to restrain and monopolize the aforesaid trade and commerce, and that the defendants Morgan, National and Transit have monopolized the aforesaid trade and commerce, in violation of Sections 1 and 2 of the Sherman Act.

2. That the defendants Morgan, National and Transit and all persons acting or claiming to act on their behalf, each be permanently enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining, or renewing the violations alleged in this complaint, or from engaging in any other combination or conspiracy having a similar purpose or effect, or from adopting or following any practice, plan, program, or device having a similar purpose or effect.

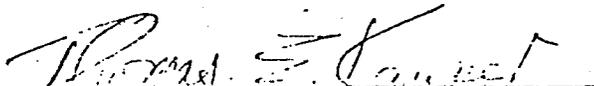
3. That the defendants Morgan and National each be required to surrender to the ICC and cease operating under such mobile home authority as may be found appropriate and necessary to dissolve the unlawful monopoly and to prevent the perpetuation of its effects in for-hire transportation of mobile homes.

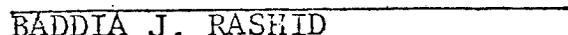
4. That the plaintiff be afforded such further injunctive relief as may be appropriate and necessary to terminate the unlawful combination and conspiracy and to prevent the perpetuation of its effects.

5. That judgment be rendered against the defendants for damages suffered by the United States by reason of the violations alleged herein of the antitrust laws, as

provided for in Section 4A of the Clayton Act, together with such interest thereon as is permitted by law and the cost of this suit.

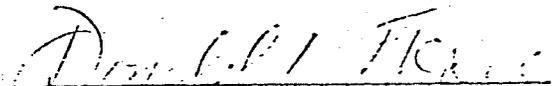
6. That it recover such other amounts and have such other and further relief as the Court shall deem just.

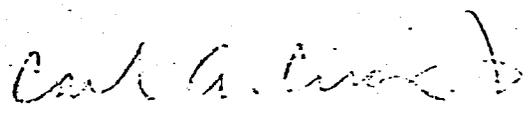
  
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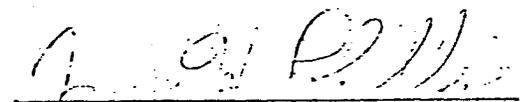
  
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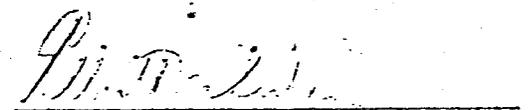
  
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