

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA, )  
 )  
 ) Plaintiff, )  
 )  
 ) v. )  
 )  
 ) BAXTER TRAVENOL LABORATORIES, )  
 ) INC. and AMERICAN HOSPITAL )  
 ) SUPPLY CORPORATION, )  
 )  
 ) Defendants. )

CIVIL ACTION

NO. 5-85-01

FILED:

FINAL JUDGMENT

Entered: 4/15/86

Plaintiff, United States of America, having filed its Complaint herein on November 22, 1985, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against, or any admission by, any party with respect to any issue of fact or law herein;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter herein and of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II

Definitions

As used in this Final Judgment:

- A. "American" means American Hospital Supply Corporation, each division, subsidiary or affiliate thereof, each successor or assign, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.
- B. "Baxter" means Baxter Travenol Laboratories, Inc., each division, subsidiary or affiliate thereof, each successor or assign, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.
- C. "McGaw Contract" means the "Purchase and Sale Agreement Dated November 1, 1985 Among American Hospital Supply Corporation and American Hospital Supply Del Caribe, Inc., and The Kendall Company, NDM Corporation, NDM Corporation of Puerto Rico, Inc. and Anatros Corporation Relative to the Assets of the McGaw Division and the NDM and Anatros Operations," and all schedules and exhibits thereto, as modified on November 19, 1985.
- D. "McGaw Assets" means all of the tangible and intangible assets of American and Baxter to be sold or otherwise transferred to The Kendall Company pursuant to the McGaw Contract.

- E. "Haemonetics Contract" means the "Asset Purchase Agreement" dated October 18, 1985 among American Hospital Supply Corporation, American Haemonetics Corporation, AHS/Deutschland GmbH, American Hospital Supply Del Caribe, Inc., and Latham Labs, Inc. relating to the business of the American Haemonetics Corporation, and all schedules and exhibits thereto.
- F. "Haemonetics Assets" means all of the tangible and intangible assets of American to be sold or otherwise transferred to Latham Labs, Inc. pursuant to the Haemonetics Contract.
- G. "Glove Contract" means the "Purchase Agreement" dated November 15, 1985 between American Hospital Supply Corporation and Ansell, Inc. relating to medical glove manufacturing and packaging facilities, and all schedules and exhibits thereto, as modified on November 18, 1985.
- H. "Glove Assets" means all of the tangible and intangible assets of American to be sold or otherwise transferred to Ansell, Inc. pursuant to the Glove Contract.
- I. "Person" means any individual, partnership, firm, corporation, association, or any other business or legal entity.
- J. "Infusion Device" means any electronic intravenous infusion control device.

### III

The provisions of this Final Judgment shall apply to the defendants and to each of their subsidiaries, successors and assigns, and to each of their officers, directors, agents, employees, and attorneys, and to all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

### IV

The purpose of this Final Judgment is to ensure that the defendants execute, close on and perform the McGaw Contract, the Haemonetics Contract and the Gloves Contract. Each of these contracts have been filed with the Court.

### V

Should American or Baxter retain any of the McGaw Assets, the Haemonetics Assets, or the Glove Assets beyond the effective date of this Final Judgment, defendants shall immediately provide written notice of such retention to plaintiff. Upon an application by the plaintiff thereafter, the Court shall immediately appoint an independent trustee, acceptable to the plaintiff, who shall have the power and authority to sell the McGaw Assets, the Haemonetics Assets, and the Glove Assets at the best price then obtainable to a buyer or buyers acceptable to the plaintiff. The defendants, immediately upon the appointment of the independent trustee,

shall transfer all retained McGaw Assets, Haemonetics Assets, and Glove Assets to the trustee. The defendants shall provide to the trustee such information, capital, personnel, or other assistance as the trustee may request. The trustee shall serve at the cost and expense of the defendants. Any such assets for which the trustee has not found a purchaser within three months after he receives them shall be sold at auction at the best obtainable price. The defendants are prohibited from purchasing or bidding for the McGaw Assets, the Haemonetics Assets or the Glove Assets, or any combination thereof, to be sold by the trustee. All monies derived by the trustee from the sale of assets, after expenses, shall be turned over to the defendants.

#### VI

The terms of the Stipulated Hold Separate Order entered into by the plaintiff and the defendants, filed with the Court, and attached hereto as Exhibit A, are incorporated herein by reference.

#### VII

Baxter and American shall comply with all terms and conditions of the Infusion Device Distribution and Option Agreement ("Infusion Agreement") incorporated by reference in, and made an Exhibit to, the McGaw Contract. Baxter and American shall not in any way modify the Infusion Agreement to

permit either of them to sell infusion devices to The Kendall Company at a price that is dependent in any way on the price at which Kendall resells those devices.

#### VIII

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted:

1. Access during the office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and
2. Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees and agents of such defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to any defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

C. If at the time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

IX

This Final Judgment will expire on the tenth anniversary of its date of entry or upon motion by plaintiff.

X

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XI

Entry of this Final Judgment is in the public interest.

/s/ H. STUART CUNNINGHAM  
UNITED STATES DISTRICT JUDGE

Dated: