

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

HOSPITAL AFFILIATES INTERNATIONAL,
INC., and AMERICAN HEALTH SERVICES,
INC.,

Defendants.

Civil No.: 80-3672

Filed: September 25, 1980

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action for equitable relief against the defendants and alleges the following:

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 defendants from violating Section 7 of the Clayton Act, 15 U.S.C. §18, and Section 2 of the Sherman Act, 15 U.S.C. §2.

2. Both defendants transact business and maintain offices within this district.

II

THE DEFENDANTS

3. Hospital Affiliates International, Inc. [hereinafter "HAI"], is made a defendant herein. HAI is a corporation organized and existing under the laws of the State of Delaware, with offices at 4225 Harding Road, Nashville, Tennessee. HAI is a wholly-owned subsidiary of INA Health Care Group, Inc., which is a wholly-owned subsidiary of INA Corporation. HAI

is engaged in the business of owning, operating and managing domestic general acute-care and private psychiatric hospitals. As of 1979, it owned, operated or managed 142 hospitals with over 18,000 beds in thirty-four states. Presently, it owns or manages twelve private psychiatric hospitals, including two in New Orleans, Louisiana. In 1979, INA Corporation and HAI, respectively, reported assets of approximately \$9 billion and \$404.1 million, revenues of approximately \$4.5 billion and \$443.3 million, and net income of approximately \$261.6 million and \$19.6 million.

4. HAI owns 100% of Coliseum House Medical Center, and 50% of River Oaks Hospital, both of which are private psychiatric hospitals in New Orleans, Louisiana. Coliseum House and River Oaks each have 100 psychiatric beds licensed by the State of Louisiana, and HAI manages both private psychiatric hospitals.

5. American Health Services, Inc. [hereinafter "AHS"], is made a defendant herein. AHS is a corporation organized and existing under the laws of the Commonwealth of Virginia, with offices at 5530 Wisconsin Avenue, N.W., Washington, D.C. AHS is engaged in real estate ventures and owning, operating, leasing and managing private psychiatric hospitals and one skilled nursing facility. Presently, AHS owns or leases four private psychiatric hospitals in two states, including one in New Orleans, Louisiana. In 1979, AHS reported assets of approximately \$16.8 million, revenues of approximately \$12.2 million and income of approximately \$3.2 million.

6. AHS leases and manages DePaul Hospital in New Orleans, Louisiana, pursuant to a long-term lease, which expires in 1983, and which has several options to renew and an option to purchase. DePaul is a private psychiatric hospital with 249 beds licensed by the State of Louisiana.

III

TRADE AND COMMERCE

7. In-patient psychiatric care consists of various forms of therapy, including the use of psychotherapy, medication, milieu therapy and electroconvulsive therapy, provided to patients with mental health disorders who have been admitted to, and are treated in, a hospital facility. Such facilities offer one or more programs, including short- and long-term psychiatric care; acute and general psychiatric care; and psychiatric care for children, adolescents, adults, and the elderly.

8. Louisiana Health Service Area 1, as designated pursuant to the National Health Planning and Resources Development Act of 1974, 42 U.S.C. § 300k, et seq., consists of the Parishes of Orleans, Jefferson, St. Bernard, St. Tammany, Assumption, LaFourche, Plaquemines, St. Charles, St. James, St. John the Baptist and Terrebonne [hereinafter the "New Orleans area"]. Within the New Orleans area in-patient psychiatric care is offered by a Veterans Administration hospital, two psychiatric hospitals owned by the State of Louisiana, the psychiatric units of several acute care hospitals, and three private psychiatric hospitals, Coliseum House, River Oaks Hospital and DePaul Hospital. These hospitals primarily serve residents of the New Orleans area.

9. While psychiatric in-patient facilities owned by the State of Louisiana and the United States contain psychiatric beds, only psychiatric beds in private psychiatric hospitals or in general acute-care hospitals are available to psychiatrists in private practice who wish to treat their patients while they are hospitalized. In-patient care offered by private psychiatric hospitals and general acute-care hospitals constitutes a market.

10. The general and psychiatric hospitals in the New Orleans area owned by the State of Louisiana are required to accept anyone needing care, regardless of their ability to pay. With few exceptions, private psychiatric hospitals, on the other hand,

require that patients be able to pay for their care either out-of-pocket or through insurance. The psychiatric staffs at state-owned psychiatric hospitals consist of salaried employees of the hospital. Psychiatrists in private practice, who treat their patients in in-patient psychiatric facilities, do not admit their patients to state-owned hospitals.

11. Admission to the Veterans Administration hospital in New Orleans, which is owned and operated by the United States, is limited to veterans who have been honorably discharged from the armed services. The medical staff of the Veterans Administration hospital consists of employees (rather than physicians in private practice), and the hospital provides different services than those services provided by private psychiatric hospitals. Psychiatrists in private practice, who treat their patients in in-patient psychiatric facilities, do not admit their patients to the Veterans Administration hospital.

12. Coliseum House, River Oaks Hospital and DePaul Hospital own or control approximately 72% of all-licensed psychiatric hospital beds (excluding those in hospitals owned by the federal government or the State of Louisiana) in the New Orleans area.

13. While the psychiatric units of general acute-care hospitals compete to some extent with private psychiatric hospitals for patients, psychiatrist affiliation and in other ways, in-patient care delivered by private psychiatric hospitals constitutes a separate sub-market, for which many psychiatrists and patients find no suitable substitutes.

14. Several general acute-care hospitals in the New Orleans area have small psychiatric wards, but such facilities do not offer the breadth of services offered by private psychiatric hospitals and primarily serve very short-term and emergency patients. Private psychiatric hospitals offer a distinctive mix of services, therapies and milieu which is not offered by the psychiatric units of general acute-care hospitals.

15. HAI and AHS presently own and control 100% of the licensed private psychiatric hospital beds in the New Orleans

area. Private psychiatric hospitals in the New Orleans area compete with one another for patients, psychiatrist affiliation and in other ways. The existence of private psychiatric hospitals under separate ownership induces improvements in the quality and variety of in-patient psychiatric treatment offered in the New Orleans area.

16. HAI and AHS, and the private psychiatric hospitals owned by them in the New Orleans area, are engaged in, and their activities affect, interstate commerce. HAI and AHS own private psychiatric hospitals in several states; their hospitals in Louisiana purchase substantial amounts of goods and services from sources in other states; a substantial portion of the revenues of their Louisiana hospitals are paid from locations outside the State of Louisiana; and their private psychiatric hospitals in Louisiana treat some patients from other states.

IV

VIOLATIONS ALLEGED

Count One

17. On or about September 30, 1980, HAI will purchase all the outstanding stock of AHS. As part of this transaction, HAI will obtain control of DePaul Hospital in New Orleans.

18. The effect of this acquisition may be substantially to lessen competition or to tend to create a monopoly in the aforesaid trade and commerce in violation of Section 7 of the Clayton Act in the following ways, among others:

- (a) Actual competition in the market for in-patient psychiatric care in the New Orleans area provided by private psychiatric hospitals and general acute-care hospitals not owned by the federal government or State of Louisiana will be reduced;
- (b) Concentration in the market for in-patient psychiatric care in the New Orleans area provided by private psychiatric hospitals and general acute-care hospitals not owned by the federal government or State of Louisiana will be increased;

- (c) Actual competition in the sub-market for private psychiatric hospital in-patient care in the New Orleans area will be reduced or eliminated; and
- (d) Concentration in the sub-market for private psychiatric hospital in-patient care in the New Orleans area will be greatly increased.

Count Two

19. The United States repeats and realleges the allegations of paragraphs 3 through 17.

20. Beginning at least as early as March, 1980, HAI embarked upon a course of action to acquire AHS and subsequently agreed to purchase all the outstanding common stock of AHS. If it is allowed to acquire AHS, HAI will monopolize, in violation of Section 2 of the Sherman Act, 15 U.S.C. §2, the market for in-patient psychiatric care delivered by private psychiatric hospitals and general acute-care hospitals not owned or operated by the federal government or the State of Louisiana, and the sub-market for in-patient psychiatric care delivered by private psychiatric hospitals.

21. The monopolization of the aforementioned market and sub-market will occur in the following ways and have the following effects, among others:

- (a) AHS will be eliminated as a significant competitor in the aforementioned market and sub-market;
- (b) concentration will be substantially increased and the potential for deconcentration will be substantially decreased;
- (c) HAI's monopoly power will be substantially increased and the potential for it to be lessened will be substantially decreased; and
- (d) actual competition in the aforementioned market and sub-market will be substantially lessened and eliminated.

PRAYER

WHEREFORE, plaintiff prays:

1. That pending final adjudication of the merits of this complaint, a temporary restraining order and preliminary

injunction be issued preventing and restraining the defendants, their parents and subsidiaries, and all persons acting on their behalf, from taking any action, directly or indirectly, in furtherance of the acquisition of AHS by HAI.

2. That the acquisition of AHS by HAI be adjudged to be in violation of Section 7 of the Clayton Act and Section 2 of the Sherman Act.

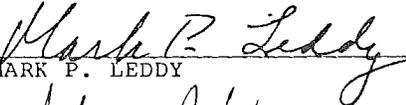
3. That HAI and AHS be permanently enjoined from carrying out the acquisition of AHS by HAI, or any similar plan or agreement the effect of which would be to combine the businesses of HAI and AHS; and

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

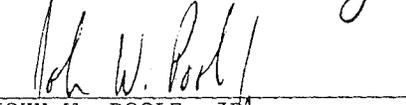
5. That the plaintiff recover the costs of this action.


SANFORD M. LITWACK
Assistant Attorney General

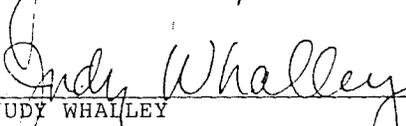
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