

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Leggett & Platt, Inc., U.S. District Court, S.D. Ohio, 1979-1 Trade Cases ¶62,453, (Jun. 7, 1978)

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United States v. Leggett & Platt, Inc.

1979-1 Trade Cases ¶62,453. U.S. District Court, S.D. Ohio, Western Division, Civil Action No. C-1-78-36 Entered June 7, 1978.

(Competitive impact statement and other matters filed with settlement: 43 *Federal Register* 5594). Case No. 2395, Antitrust Division, Department of Justice.

Clayton Act

Acquisitions: Divestiture: Metal Bed Frames: Consent Decree.— A Missouri metal bed frame manufacturer was barred by a consent decree, for a period of five years, from acquiring any of the assets, stock or share capital of, or merger with, a metal bed frame manufacturer located East of the Rocky Mountains. The manufacturer was also required to divest itself of its interests in plants located in Oklahoma and Kentucky. Under the terms of the decree, if those plants were not sold within twelve months, appointment of a trustee was required to effect the sale at the cost and expense of the manufacturer.

For plaintiff: Hugh P. Morrison, Jr., Acting Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, John L. Wilson, John A. Weedon, William A. LeFaiver, David F. Hils, Saundra B. Wallack, and Donald S. Scherzer, Attys., Dept. of Justice, Antitrust Div. **For defendant:** Shughart, Thomson & Kilroy, by Harry P. Thomson, Jr., Kansas City, Mo.

Final Judgment

RUBIN, D. J.: Plaintiff, United States of America, having filed its Complaint herein on June 28, 1974; Defendant, Leggett & Platt, Incorporated, having filed its Answer denying the substantive allegations of the Complaint; and the parties, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of or finding on any issues of fact or law herein and without this Final Judgment Constituting any evidence against or admission by any party in respect to any issue of fact or law herein;

Now, Therefore, without any testimony having been taken herein, and without trial or adjudication of or finding on any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[Jurisdiction]

This Court has jurisdiction of the subject matter hereof and the parties hereto. The Complaint states claims upon which relief may be granted against the Defendant under [Section 7 of the Clayton Act](#).

II

[Definitions]

As used in this Final Judgment:

(A) "Leggett & Platt" means the Defendant, a Missouri corporation, and its subsidiaries and divisions or any of them, and any successors or assigns.

- (B) "East of the Rocky Mountains" means the geographical area of the United States which is located east of the eastern borders of the States of Idaho, Utah, and Arizona.
- (C) "Metal bed frame" means a metal frame which consists, essentially, of steel angle rails riveted together in such a manner as to form, together with casters and brackets, a platform which is used to support a bedding ensemble (i. e., mattress and boxsprings).
- (D) "Metal bed rails" means the steel angle side rails of a bed which connect headboard and footboard and support a boxspring and mattress.
- (E) "Metal trundle beds" means a high and low steel bed combination sold in pairs where the low bed slides under the high bed for storage when not in use. Both beds are foundation supports for mattresses.
- (F) "Metal pop-up" means a low height steel bed section generally on casters or glides which is a foundation for a mattress and which activates with a tension helical manually to raise up to average level sleeping height. It may be sold separately or in combination with other beds.
- (G) "Metal rollaway bed" means a steel angle link fabric metal bed that jackknives when not in use so that it can be rolled away into a closet for storage. It is usually made with a small foot and head attachment to contain the bed clothes and is mounted on casters. It acts as a foundation spring for a mattress.
- (H) "Trundle bed springs" means a steel angle link fabric spring suspended from a head and foot trundle bed section and used as a foundation support for a mattress.
- (I) "Bunk bed springs" means a steel angle link fabric spring suspended from a head and foot bunk bed section and used as a foundation support for a mattress.
- (J) "Hominy" means Leggett & Platt's interest in the manufacturing assets and facilities listed on Exhibit A.
- (K) "Winchester" means the building presently owned by Leggett & Platt and located at 301 West Broadway, Winchester, Kentucky.
- (L) "Person" means any individual, partnership, firm, corporation, association, or any other business or legal entity.

III

[*Applicability*]

The provisions of this Final Judgment applicable to the Defendant, Leggett & Platt, shall apply also to its officers, directors, agents and employees, and to its subsidiaries, successors and assigns, and to any person in active concert or participation with any of them who receives actual notice of this Final Judgment by personal service or otherwise.

IV

[*Divestiture*]

- (A) Leggett & Platt is ordered and directed to sell Hominy and, at the option of the purchaser of Hominy, to sell Winchester to such purchaser. Such sales shall be made within thirty (30) months as provided in this Section IV.
- (B) For twelve (12) months from the date of entry of this Final Judgment, Leggett & Platt shall actively and in good faith attempt to sell Leggett & Platt's interest in Hominy and, at the option of the purchaser of Hominy, Winchester.
- (C) If Hominy has not been sold within twelve (12) months from the date of entry of this Final Judgment, the Court shall appoint a Trustee to effect the sale, who shall serve at the cost and expense of Leggett & Platt. Leggett & Platt shall place its interest in Hominy and Winchester in the control of a Trustee promptly after the Trustee's appointment by this Court. The Trustee shall have full authority to dispose of such interest in accordance with the provisions of this Final Judgment. The Trustee shall be governed in all matters hereunder

by standards of reasonableness. Leggett & Platt shall fully cooperate with Trustee in the performance of Trustee's duties hereunder.

(D) Leggett & Platt and thereafter the Trustee shall use their best efforts to sell Hominy to a person (i) who intends to operate Hominy as a going business for the manufacture of metal bed frames and related products and for the sale of such products to parties independent of such person and (ii) who is deemed suited to increase competition in the sale of such products.

(E) If the purchaser of Hominy elects to purchase Winchester, Leggett & Platt shall prepare and provide to such purchaser all plans and layouts necessary to give Winchester the capability of producing \$1,500,000 of metal bed frames annually.

(F) At the option of the purchaser of Hominy, Leggett & Platt shall buy, F. O. B., Hominy, Oklahoma, during the first eighteen (18) months following the divestiture of Hominy, at least \$500,000 of metal bed frames at Leggett & Platt's list price for purchases of comparable quantity, less 20 percent. Leggett & Platt shall have the right to establish reasonable specifications for such frames.

(G) If such a purchaser for Hominy is not found within twenty-four (24) months from the entry of this Final Judgment, the Trustee shall sell the assets of Hominy individually or collectively for the best obtainable price.

(H) The sale shall be for cash or cash equivalent and, when made, shall be absolute and unqualified. Thereafter, Leggett & Platt shall have no interest in or liability (contingent or otherwise) as to Hominy, provided that neither this paragraph nor any other part of this decree shall prevent Leggett & Platt from assigning its leases or subletting its leased premises to a purchaser hereunder, and to such extent remaining liable as to its leases.

(I) Not less than sixty (60) days prior to the closing date of any proposed sale made pursuant to Section IV, Leggett & Platt or Trustee, whichever is then acting, shall notify Plaintiff and, if the Trustee is acting, Leggett & Platt in writing of the proposed sale. The notice shall set forth the details of the proposed transaction. Within thirty (30) days thereafter, Plaintiff may request supplementary information concerning the proposed sale. Within thirty (30) days after the receipt of the notice or within thirty (30) days after receipt of the supplementary information, Plaintiff shall notify Leggett & Platt and the Trustee, if then acting, in writing if Plaintiff objects to the proposed sale. Upon objection by the Plaintiff, the proposed sale shall not be consummated unless approved by the Court. If the Trustee is acting, the Court shall provide the Defendant with the opportunity for a hearing on the proposed sale should Defendant raise an objection within thirty (30) days after Trustee has furnished Defendant notice of the sale.

(J) Leggett & Platt and Trustee, after appointment, shall furnish to any bona fide prospective purchaser all information regarding the business of Hominy and Winchester which is reasonably necessary and shall permit such prospective purchaser to inspect Hominy and Winchester, provided that any information so obtained shall be held in confidence, not used for commercial purposes, and used only by the prospective purchaser to evaluate the merits of the proposed acquisition. If necessary, Leggett & Platt may request the Court to issue an appropriate protective order.

V

[Reports]

During the first twelve (12) months after the entry of this Final Judgment, Defendant shall cause reports to be submitted every sixty (60) days to the United States Assistant Attorney General in charge of the Antitrust Division ("Assistant Attorney General") outlining in detail the efforts made to comply with the provisions of Section IV above and setting forth the names and addresses of all persons who have made an offer to acquire Hominy, together with the terms and conditions of such offer. Thereafter, within the time specified by Section IV above, Trustee shall cause such reports to be submitted every sixty (60) days, or as requested by either party, to the Assistant Attorney General and to Leggett & Platt.

VI

[Acquisitions; Mergers]

For a period of five (5) years from the date of entry of this Final Judgment, Leggett & Platt shall not acquire any of the assets (except goods or merchandise acquired in the normal course of business), stock or share capital of, or merge with, a person located East of the Rocky Mountains and engaged in the manufacture and sale of metal bed frames, metal bed rails, metal trundle beds, metal pop-ups, metal rollaway beds, trundle bed springs, or bunk bed springs to parties independent of such person, unless it first obtains the consent of Plaintiff or the approval of this Court.

VII

[Inspection]

(A) For the purpose of securing or determining compliance with this Final Judgment:

(1) Duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the Defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(a) Access during the office hours of Defendant, who may have counsel present, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Defendant which relate to any matters contained in this Final Judgment; and

(b) Subject to the reasonable convenience of Defendant and without restraint or interference from it, to interview officers, directors, agents, servants, or employees of Defendant, who may have counsel present, regarding any such matters.

(2) Defendant, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to its principal office, shall submit such reports in writing, under oath if requested, with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

(B) No information or documents obtained by the means provided for in this Section VII 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 the Defendant to Plaintiff, the Defendant represents and identifies in writing the material in any such information or documents which is of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the Defendant marks each pertinent page of such material, "Subject to Claim of Protection under the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by Plaintiff to Defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which Defendant is not a party.

VIII

[Retention of Jurisdiction]

Jurisdiction of this cause is retained by the 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 thereof, and for the enforcement of compliance therewith and the punishment of violations thereof.

IX

[Public Interest]

Entry of this Final Judgment is in the public interest.