

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. )  
)  
SIMMONS COMPANY, )  
)  
Defendant. )

Civil No. 70-121

Filed: April 4, 1970

COMPLAINT

The United States of America, plaintiff, by its attorneys,  
General, acting under the direction of the Attorney General of the United States,  
brings this action against the above-named defendant and complains and alleges as follows:

JURISDICTION AND VENUE

This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, 15 U.S.C. § 4, as amended, commonly known as the Sherman Act, to prevent and restrain continuing violations, as herein-  
after alleged, of Section 1 of the Sherman Act (15 U.S.C. § 1).

2. Defendant Simmons Company has an office, transacts business, and is found within the Eastern Division of the Southern District of Ohio.

THE DEFENDANT

3. Simmons Company (hereinafter referred to as "Simmons"), a corporation organized and existing under the laws of the State

of Delaware, and having its executive offices in New York City, New York, is made the defendant herein. Simmons' primary business is the manufacture of mattresses and bedding items. Other products manufactured by Simmons are hospital, living room, school, hotel, and office furniture.

### III

#### DEFINITION

The term "hospital furnishings" means Simmons products sold to hospitals and related institutions by distributors or under a SIMMONS COMPANY SALES AGENT'S CONTRACT or any successor agreements and includes, but is not limited to, hospital beds, hospital equipment, patient room furniture and chairs, upholstered furniture, and office furniture.

### IV

#### TRADE AND COMMERCE

5. Simmons Company is one of the largest manufacturers of hospital furnishings. It has manufacturing plants in 22 United States and Canadian cities. Simmons manufactures hospital beds and accessories, cribs, and patient room furniture and chairs in its factory in Munster, Indiana. Mattresses for hospitals are manufactured at Columbus, Ohio.

6. Substantial quantities of Simmons hospital furnishings are shipped from various factories, including those at Munster, Indiana, and Columbus, Ohio, and were distributed and sold throughout the United States to public and private hospitals

and other institutions through nearly one hundred distributors under substantially identical contracts entitled, "SIMMONS COMPANY SALES AGENT'S CONTRACT," entered into between Simmons and said distributors. Sales by said distributors account for more than 90 per cent of sales of Simmons hospital furnishings, or sales in excess of \$15 million. A copy of one

such standard contract, Exhibit A, is attached hereto, incorporated herein, and made a part of this complaint.

7. Under the SIMMONS COMPANY SALES AGENT'S CONTRACT, said distributors are authorized to offer Simmons-manufactured hospital furnishings to hospitals and other institutions, and other

Said distributors are also required to assume the costs of operating their own businesses, responsibility for collection

of goods from customers, the risk for loss or destruction of goods or destruction of goods in their custody, and the costs of providing services such as

freight and cartage from delivery points and installation. Said distributors normally also distribute and sell a broad line of hospital furnishings and merchandise of manufacturers other than Simmons.

other than Simmons.

OFFENSES CHARGED

8. Beginning at least in 1951 and continuing up to and including the date of this complaint, the defendant has entered into a series of contracts in restraint of the afore-

said interstate trade and commerce in violation of Section 1 of the Sherman Act, as amended (15 U.S.C. § 1).

9. The aforesaid contracts have consisted of continuing agreements between the defendant and each of its distributors, the substantial terms of which have been and are to establish, fix, and maintain the prices of hospital furnishings to be charged by said distributors and to fix the bids of said distributors to hospitals and related institutions.

10. Pursuant to the aforesaid contracts, defendant has contractually required fixed prices of its distributors and has required adherence to prices fixed by it. Such violations of law are continuing and will continue unless the relief hereinafter prayed for is granted.

## VI

### EFFECTS

11. The unlawful contracts hereinbefore described have since their inception had the following effects, among others:

- (a) Prices of Simmons hospital furnishings to hospitals and other institutions have been fixed and maintained at arbitrary and non-competitive levels;
- (b) Competition in the sale of Simmons hospital furnishings has been restrained and suppressed; and
- (c) Hospitals and other institutions have been deprived of the benefits of free and open competition in the purchase of hospital furnishings.

PRAYER

WHEREFORE, THE PLAINTIFF PRAYS:

1. That the aforesaid contracts insofar as they contain the terms described in paragraph 9 hereof, be adjudged and decreed to be unlawful and in violation of Section 1 of the Sherman Act.

2. That all of the provisions in the defendant's contracts, alleged in paragraph 6 of this complaint, which fix or maintain the prices of Simmons hospital furnishings, as hospital contracts, as well as restrictions relating thereto, be declared illegal and unenforceable.

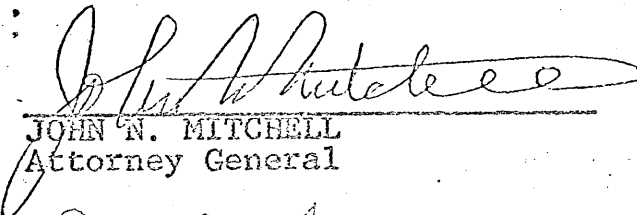
3. That the defendant, its officers, agents, employees, and all other persons acting or claiming to act on its behalf, be enjoined from entering any contract, agreement, or understanding, which, directly or indirectly, relates to the prices at which Simmons hospital furnishings may be sold.

4. That the defendant, its officers, agents, employees, and all other persons acting or claiming to act on its behalf, be enjoined from suggesting to distributors the prices at which Simmons hospital furnishings should be sold or from otherwise communicating to distributors lists of suggested prices.

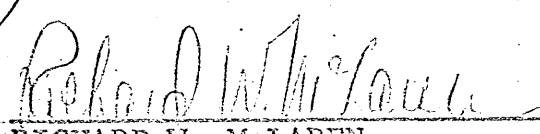
5. That the defendant be required to give appropriate written notice of the terms of the final judgment to be entered therein to its distributors and advise them that they may sell their Simmons hospital furnishings at such prices as they may choose.

6. That the plaintiff have such other and further relief as the nature of the case may require and the Court may deem proper.

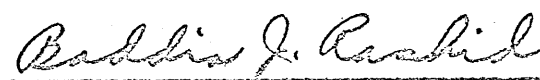
7. That the plaintiff recover the costs of this suit.

  
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