IN THE MATTER OF

GENERAL MOTORS CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket C-3132. Complaint, April 11, 1984—Decision, April 11, 1984

This consent order limits the Joint Venture between General Motors Corporation and Toyota Motor Corporation to the manufacture and sale of no more than 250,000 subcompact cars per year, for a period of twelve years, ending no later than Dec. 31, 1997. While GM, Toyota and the Joint Venture are permitted to exchange information necessary to produce the Sprinter-derived vehicles, the order prohibits the transfer or communication of any information concerning current or future prices of new automobiles or component parts produced by either automaker; sales or production forecasts or plans for any product not produced by the Joint Venture; marketing plans for any product, including products produced by the Joint Venture; and development and engineering activities relating to the product of the Joint Venture.

Appearances

For the Commission: *Edward F. Glynn, Jr.*

For the respondents: *Richard W. Pogue, Jones, Day, Reavis & Pogue,* Cleveland, Ohio and *Robert C. Weinbaum,* in-house counsel, Detroit, Mich. for respondent General Motors Corp. *Earl W. Kintner* and *Eugene Meigher, Arent, Fox, Kintner, Plotkin & Kahn,* Washington, D.C. and *Takeo Tsukada,* in-house counsel, Toyota City, Aichi Prefecture, Japan for respondent Toyota Motor Corp.

COMPLAINT

The Federal Trade Commission, having reason to believe that General Motors Corporation ("GM" or "General Motors") and Toyota Motor Corporation ("Toyota") intend to acquire shares in a Joint Venture corporation in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and it appearing that a proceeding by the Commission in respect thereof would be in the public interest, the Commission hereby issues its Complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

I. DEFINITION

1. For the purpose of this Complaint, the following definition shall apply: *new automobiles* means new passenger automobiles manufactured or sold in the United States or Canada, and includes light trucks and vans.

II. GENERAL MOTORS CORPORATION

2. General Motors is a Delaware corporation with headquarters at 3044 West Grand Boulevard, Detroit, Michigan.

III. TOYOTA MOTOR CORPORATION

3. Toyota is a Japanese corporation with headquarters at 1, Toyota Cho, Toyota City, Aichi Prefecture 471, Japan.

IV. JURISDICTION

4. At all times relevant herein, each of the companies named in this complaint has been engaged in or affected commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended (15 U.S.C. 12), and Section 4 of the Federal Trade Commission Act, as amended (15 U.S.C. 44).

V. THE PROPOSED JOINT VENTURE

5. Pursuant to an agreement reflected in a Memorandum of Understanding (hereinafter "Memorandum") executed by GM and Toyota on February 17, 1983, attached to this Complaint as Exhibit 1, GM and Toyota have agreed to form a Joint Venture corporation (hereinafter "Joint Venture"). GM and Toyota will each acquire one-half of the shares in the Joint Venture and will each designate one-half of the Board of Directors of the Joint Venture. The Joint Venture will be managed principally by persons designated by Toyota. The Joint Venture will manufacture new automobiles that will be designed by Toyota in consultation with GM and will be sold to GM, and may also manufacture new automobiles that would be sold to Toyota.

VI. TRADE AND COMMERCE

6. The relevant product market is the manufacture or sale of small new automobiles, which includes automobiles commonly referred to as subcompact, compact, and intermediate sized automobiles.

7. The relevant geographic market is the United States and Canada.

8. Concentration in the relevant product and geographic markets is high.

9. Both GM and Toyota are substantial competitors in the relevant product and geographic markets.

VII. EFFECTS OF THE PROPOSED JOINT VENTURE

10. The effect of the Joint Venture may be substantially to lessen competition or tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), or may be unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), in the following ways:

(a) The output of the Joint Venture is likely to be significantly expanded beyond the single module, capable of producing not more than 250,000 new automobiles per year, an expansion that would not be reasonably necessary to accomplish any of the legitimate purposes of the Joint Venture; and

(b) The Joint Venture would provide no adequate safeguards against the use of the Joint Venture, or the relationships between GM and Toyota that are occasioned by the Joint Venture, for the transmission of competitively significant information beyond the minimum degree reasonably necessary to accomplish the legitimate purposes of the Joint Venture.

11. Each of the effects identified in Paragraph 10, singly or in combination, would significantly increase the likelihood of noncompetitive cooperation between GM and Toyota, the effect of which may be substantially to lessen competition in the relevant markets, and would not be reasonably necessary to obtain any legitimate, procompetitive benefits of the Joint Venture.

VIII. VIOLATIONS CHARGED

The parties' agreement to the proposed Joint Venture constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

EXHIBIT 1

TOYOTA MOTOR CORPORATION-
GENERAL MOTORS CORPORATION

MEMORANDUM OF UNDERSTANDING

FEBRUARY 17, 1983

TOYOTA MOTOR CORPORATION (Toyota) and GENERAL MOTORS CORPORATION (GM) agree to establish a joint venture (JV) for the limited purpose of manufacturing in the United States a specific automotive vehicle not heretofore produced, and related components described below. In so doing, it is the intent of both parties to provide such assistance to the JV as is considered appropriate to the enhancement of the JV's success. The JV will be limited in scope to this vehicle and this agreement is

not intended to establish a cooperative relationship between the parties in any other business.

The purpose of this Memorandum is to summarize the current understanding of Toyota and GM regarding the basic parameters of this limited manufacturing arrangement.

Product

The vehicle to be manufactured by the JV will be derived from Toyota's new front-wheel Sprinter. Body styles will include a 4-Door Sedan and (6–12 months later) a 5-Door Liftback. Toyota will retain design authority over the vehicle, in consultation as to vehicle appearance with GM, the purchaser. As modifications will probably be made to the Sprinter or Corolla over time in accordance with market demand, Toyota will effect similar changes to the JV vehicle if such changes are deemed desirable by the parties. Vehicle certification will be handled by Toyota, with assistance provided by the JV and GM as agreed upon by the parties.

Manufacturing

The JV will begin produciton of the GM-specific vehicle as early as possible in the 1985 Model Year with nominal capacity of approximately 200,000 units per annum at GM's former assembly facility in Fremont, California.

As part of the technical assistance stated hereinafter, Toyota will take the initiative, in consultation with GM, in designing the Fremont manufacturing layout and coordinating the related acquisition and installation of its machinery, equipment and tooling. In this regard, if GM deems it necessary for orders to be placed for construction of buildings, JV machinery, equipment and tooling prior to the establishment of the JV to facilitate a timely introduction of the initial JV vehicle in the 1985 Model Year, GM may do so in its own name directly or through Toyota, and the parties agree to share equally any capital expenditures or cancellation charges arising from such orders. The only exceptions to the above are as follows: In the event the JV is not established as a result of unfavorable U.S. governmental review of the matters set forth in this Memorandum or, following consultations between the senior management of Toyota and GM, as a result of either party notifying the other on or prior to one hundred twenty (120) days following the signing of this Memorandum of Understanding by the parties that such party is not satisfied with the prospects for developing an acceptable employe relations structure, GM shall bear 100% of the cost of such expenditures and charges.

GM's annual requirements are presently expected to exceed 200,000 units per annum. Both parties will, therefore, assist the JV in increasing its production to the maximum extent possible within the available capacity. Requirements for capacity beyond the first module will be the subject of a separate study.

The JV may later produce a variation of the JV vehicle for Toyota. Toyota and GM may also agree for GM to source the GM-specific vehicle from Toyota assembly plants in Japan, freeing JV capacity for Toyota's full or partial production of Toyota-specific vehicles.

Purchase of Production Materials

The JV will purchase its production materials from those sources providing the least possible cost, consistent with its standards for product quality and vendor reliability of supply. Based on this principle, Toyota and GM have agreed upon a tentative sourcing approach, under which specific components to be purchased from Toyota, GM and other outside vendors have been separately identified. Components to be manufactured by the JV, mainly major stampings, have also been identified.

Marketing

All GM-specific vehicles produced by the JV will be sold directly to GM or its designated marketing units for resale through GM's dealer network. If any variation of the JV vehicles should be produced by the JV for Toyota, such vehicles would be sold directly to Toyota or its designated marketing unit for resale through Toyota's dealer network. Neither Toyota nor GM will consult the other with respect to the marketing of JV products, or any other products, through their respective marketing organizations.

Vehicles sold by the JV should be priced by the JV to provide a reasonable profit for the JV, Toyota, and GM. To accomplish this, production costs must be kept as low as possible through the combined best efforts of the JV, Toyota, GM and other major suppliers. In this regard, the parties have been conducting extensive studies detailing how each can work to minimize JV expenses.

The initial JV selling price of the JV vehicle to be sold to GM during the 1985 Model Year will be determined at least 60 days prior to the start of production by negotiation between the JV and GM. This negotiation will be based on the production cost estimated 90 days prior to the expected start of production by the JV, with estimates of said cost to be guided by the feasibility study. In no event, however, will the said initial JV selling price be higher than the upper limit nor lower than the lower limit, each as defined below. The upper limit shall be determined by adjusting for feature differences the Dealer Net Price less 8% of Toyota's then current U.S. model front-wheel drive Corolla equipped comparably with the JV vehicle concerned, and the lower limit shall be determined by adjusting for feature differences the Dealer Net Price less 11% of said Corolla. The adjustment for feature differences will be made by agreement between the JV and GM.

Thereafter, although there may be exceptions, the JV vehicle selling price will be revised and determined for each model year. The new selling price for the new model year will be determined by applying to the selling price for the previous model year the Index as defined in Exhibit A. Since the calculations embodied in the Index may occasionally yield a selling price which is at significant variance with then current market conditions, the JV and GM will in such cases negotiate a more appropriate selling price.

If model changes or specification changes of the vehicle manufactured by the JV are necessary, Toyota, GM and the JV will agree upon these model changes or specification changes. Toyota will present to the JV the plan for the model changes or specification changes concerned. Then, the JV will submit to and negotiate with GM the planned model changes and specification changes together with the planned price changes. These model changes and specification changes will be made as agreed upon by the JV and GM.

The methodology to be employed in pricing optional equipment available on the JV vehicle (both initial and subsequent) will be comparable to that described in the three preceding paragraphs.

The initial prices of Toyota and GM components purchased by the JV will be determined 90 days or more prior to the start of production by negotiation between the JV and component suppliers after the determination of the specifications of the JV vehicle. Identification of the respective sources of supply and determination of the initial component prices will be guided by the feasibility study, with adjustments made for changes in specifications and appropriate economics.

Thereafter, the prices of components will be reviewed semi-annually. The new prices will be determined by negotiation between the JV and component suppliers.

If it is anticipated that continuation of the above-mentioned methods for determination of the prices of the JV vehicles to be sold by the JV and of components to be

purchased by the JV would cause those prices to be at such levels as the JV would incur the losses which could endanger the normal operation of the JV, Toyota, GM and the JV shall negotiate and take necessary measures.

As a fundamental principle, Toyota and GM shall each be free to price and free to market the respective vehicles purchased from the JV without restrictions or influence from the other.

Operating Responsibility

The JV will be jointly controlled by an equal number of Toyota and GM directors, in line with Toyota and GM ownership. Toyota will designate the JV president as the chief executive officer and chief operating officer. Toyota and GM will assign to the JV other operating officers as the JV president and JV directors may request, but the parties recognize that the question of which party shall designate the JV officers in charge of financial affairs, labor relations and certain other operations has not yet been agreed upon.

Quality Assurance

New vehicle warranty expense and administration will be the responsibility of the purchaser of the JV vehicle. The JV shall maintain product liability insurance for the benefit of the JV, the parties and other persons in such amounts as the parties may deem prudent, and the premium costs for such product liability insurance will be borne by the JV. In each product liability lawsuit involving a JV vehicle, the JV and each of the parties will communicate and cooperate with each other in all respects in investigating the facts surrounding the case and in litigating the matter. Each of the parties will refrain from taking adversarial positions against each other. To the extent possible under the JV's product liability insurance arrangements, the JV shall be the entity having the right to control such product liability lawsuits. However, the relative financial share of settlement or adverse judgment costs relating to such product liability claims or losses which are not covered by such product liability insurance shall be apportioned 60% to Toyota and 40% to GM. Matters relating to JV vehicle recall campaigns (including fines and costs of corrective actions) shall be the subject of further study and negotiation between the parties.

Technical Assistance

Toyota will grant to the JV the license to manufacture the vehicle developed by Toyota, and in exchange for this license, the JV will pay a reasonable royalty to Toyota as may be agreed upon by the parties. Toyota and GM will license the necessary industrial property rights to the JV, and in exchange for these rights, the JV will pay reasonable license fees to Toyota and/or GM as may be agreed upon by the parties. Toyota and GM will also provide technical assistance to the JV on a cost basis plus reasonable markup.

As part of the technical assistance, GM agrees to assist Toyota and the JV in completing compliance tests for safety, emissions and other areas, as agreed upon by the parties.

Purchase/Sale of Equity Interest

Toyota and GM (including, subject to the approval of the other party, their wholly or majority-owned subsidiaries) will each hold a 50% equity interest in the JV. Neither party may transfer its equity interest in the JV to a third party without the written consent of the other. The above notwithstanding, the JV will terminate not later than 12 years after start of production. The methodology for disposition of Toyota and GM equity interests prior to or upon JV termination will be incorporated in the JV docu-

mentation. Any surplus or deficit of the JV as at termination of the JV will be shared equally by Toyota and GM, in line with Toyota and GM ownership. Other issues relating to JV termination will be separately discussed.

Financing

Both Toyota and GM will contribute cash and/or fixed assets to the JV in exchange for equity interests. The amount to be contributed as equity will depend upon the JV's total projected capital requirements. In the event that either lenders or lessors insist that payments made by the JV be subject to appropriate guarantees, Toyota and GM agree either to provide such guarantees based on their pro rata share of the JV or to temporarily advance funds to the JV on their own account (also on a pro rata basis). To the extent permitted by creditors, Toyota and GM further agree that any security interests held by the parties in the JV assets will be shared equally.

Future Difficulties

If it is anticipated that the establishment or continuation of the JV would become difficult or infeasible due to any legal, political or labor-related reason which may arise in the United States, the parties will in good faith discuss the measures to be taken concerning the JV and endeavor to find appropriate solutions.

Agreements to be Concluded

Depending upon the specific organizational form, various agreements will be concluded among Toyota and GM (including subsidiaries thereof) and the JV. These will include the following: Partnership Agreement or Shareholders Agreement and Articles of Incorporation; Vehicle Supply Agreement (JV to GM); Toyota Component Supply Agreement (Toyota to JV); GM Component Supply Agreement (GM to JV); Toyota Service Parts Agreement (Toyota to JV and/or GM); Technical Assistance and License Agreement; Realty and Other Asset Sale and/or Lease Agreements; Product Responsibility Agreement; and other documents related to the foregoing.

Since it is extremely important that the JV begin production as early as possible in the 1985 Model Year, Toyota and GM commit their best efforts to completing such documentation by May 15, 1983. In any event, both parties agree to immediately begin the detailed production process planning necessary for conversion of the Fremont plant. Except as set forth in the separate provisions for JV buildings, machinery, equipment and tooling referred to in the "Manufacturing" section above, expenses incurred by either party which directly benefit the JV will be properly recorded and, if mutually agreed, will be subsequently rebilled to the JV.

Transaction Review

The agreements reached between the parties relate only to the manufacturing JV described above and do not establish any special relationship between Toyota and GM who continue to be competitors in the United States and throughout the world. Toyota and GM further acknowledge that there are no implied obligations or restrictions other than those expressly set forth.

This Memorandum of Understanding is subject to review by the governments of Japan and the United States. Both parties commit to use their best efforts to obtain favorable reviews. Until execution of all formal documentation, satisfaction by the parties with the results of any government reviews which are undertaken, and satisfaction by the parties with the prospects for developing an acceptable employe relations structure, each party reserves the right to terminate negotiations without liability to the other and the JV shall not be established. However, except as separately set forth

in the "Manufacturing" section, the parties shall share equally the expenses and costs incurred by the parties which would, but for such termination, be rebilled to the JV.

Governing Language

This Memorandum of Understanding shall be executed in both an English and a Japanese version, but the parties agree that in the event of a conflict between the meaning of the English text and the Japanese text, the English text shall control.

Dated: February 17, 1983

TOYOTA MOTOR CORPORATION

/s/Eiji Toyoda, Chairman of the Board

GENERAL MOTORS CORPORATION

/s/Roger B. Smith, Chairman of the Board

EXHIBIT A

MARKET BASKET INDEX

The ten best selling models among the sub-compacts will be the models which constitute the basket. The models shall be revised at every model year on the basis of model volume in the U.S., using the latest R. L. Polk registration data for the previous 12 months.

For reference, the ten best selling models at present are as follows:

Chevrolet Cavalier	Mercury Lynx
Chevrolet Chevette	Nissan Sentra
Ford Escort	Subaru DL
Honda Accord	Toyota Corolla
Honda Civic	Volkswagen Rabbit

The "Index" shall be the weighted average rate of wholesale price fluctuations of these models from the prior model year to the current, weighting Corolla at 30% versus 70% for all other comparable models combined without regard of model volumes in the U.S.

For this purpose, the wholesale price shall be adjusted by eliminating the value of equipment changes and product improvements in comparison with the previous year models. To this end, the JV will evaluate and determine the value of equipment changes and product improvements, taking into account the opinions of Toyota and GM.

When competitive models are replaced by new models, or additional competitive models are brought in, neither the old model nor the new or additional model will be included in the calculation of the Index for the model year when such model changes take place. It will, however, be included in the calculation of the Index for subsequent model years.

Decision and Order

The Federal Trade Commission having initiated an investigation of the proposed acquisition of shares in a Joint Venture corporation by the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of the complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Clayton Act and the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent General Motors Corporation is a Delaware corporation with headquarters at 3044 West Grand Boulevard, Detroit, Michigan.

2. Respondent Toyota Motor Corporation is a Japanese corporation with headquarters at 1, Toyota Cho, Toyota City, Aichi Prefecture 471, Japan.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

Order

I.

It is ordered, That for the purposes of this Order the following definitions shall apply:

1. *GM* means General Motors Corporation, a corporation organized, existing and doing business under the laws of Delaware, with its principal offices at 3044 West Grand Boulevard, Detroit, Michigan, as well as its officers, employees, agents, its parents, divisions, subsidiaries, successors, assigns, and the officers, employees or agents of GM's parents, divisions, subsidiaries, successors and assigns.

2. *Toyota* means Toyota Motor Corporation, a corporation organized, existing and doing business under the laws of Japan, with its principal offices at 1, Toyota Cho, Toyota City, Aichi Prefecture 471, Japan, as well as its officers, employees, agents, its parents, divisions, subsidiaries, successors, assigns, and the officers, employees or agents of Toyota's parents, divisions, subsidiaries, successors and assigns.

3. The term *New Automobiles* means new passenger automobiles manufactured or sold in or shipped to the United States or Canada, and includes light trucks and vans.

4. The term *Module* means an integrated manufacturing facility, comprising, at a minimum, body, paint and final assembly functions, capable of producing not more than approximately 250,000 New Automobiles per year.

5. The term *Joint Venture* means any corporation, partnership or other entity jointly owned, controlled, managed or directed by GM and Toyota, or by both GM and Toyota and any other entity or entities, that engages in the manufacture or sale of New Automobiles. The term *Joint Venture* includes the successors and assigns of a Joint Venture, and any entity formed subsequent to a Joint Venture, for purposes similar to the purposes of a Joint Venture.

6. Information is presumptively *public* if it is reported in a publication other than one authored by GM or Toyota.

II.

It is further ordered, That respondents shall not, without the prior approval of the Commission, form any Joint Venture except a single Joint Venture that is limited to the manufacture for or sale to GM of New Automobiles derived from the Toyota Sprinter and produced by a single Module. Nothing in this paragraph is intended to or is to be

construed to prohibit this single Joint Venture from manufacturing or selling additional products to Toyota.

III.

It is further ordered, That respondents shall not form any Joint Venture that is not limited in duration to a maximum of twelve years after the start of production or that continues in operation beyond the earlier of twelve years after the start of production or December 31, 1997; *provided, however,* that nothing in this paragraph prohibits respondents from continuing any entity beyond twelve years for the limited purposes of winding up the affairs of the Joint Venture (which shall not include manufacturing New Automobiles), disposing of its assets, and providing for continuing warranty or product or service responsibilities for Joint Venture products.

IV.

It is further ordered, That respondents shall not exchange or discuss between themselves, or with any Joint Venture, non-public information in connection with New Automobiles relating to current or future:

1. Prices of GM or Toyota New Automobiles or component parts of New Automobiles, except pursuant to a supplier-customer relationship entered into in the ordinary course of business;
2. Costs of GM or Toyota products, except as provided in Paragraph V of this order;
3. Sales or production forecasts or plans for any product other than the product of the Joint Venture; or
4. Marketing plans for any product.

V.

It is further ordered, That respondents shall not, except as may be necessary to accomplish, and solely in connection with, the legitimate purposes or functioning of any Joint Venture, exchange or discuss between themselves, or with any Joint Venture, non-public information in connection with New Automobiles relating to current or future:

1. Model changes, design changes, product designs, or development or engineering activities relating to the product of the Joint Venture;
2. Sales or production forecasts or plans as they relate to the product of the Joint Venture; or
3. Costs of GM or Toyota products supplied to the Joint Venture.

VI.

It is further ordered, That each respondent shall, and respondents shall cause any Joint Venture to:

1. Maintain complete files and records of all correspondence and other communications, whether in the United States or elsewhere, between and among GM, Toyota and the Joint Venture concerning information described in Paragraph V;
2. Maintain logs of all meetings and nonwritten communications, whether in the United States or elsewhere, between and among GM, Toyota, and the Joint Venture concerning information described in Paragraph V, including in such logs the names and corporate positions of all participants, the dates and locations of the meetings or other communications and a summary or description of such information;
3. For a period of six years, retain and make available to the Federal Trade Commission on request the complete files, records and logs required by subparagraphs 1 and 2; and
4. Annually, on the anniversary date of this Order, furnish a copy of this Order to each management employee of the Joint Venture and each management employee of GM and Toyota with responsibilities for the Joint Venture, and furnish to the Federal Trade Commission a signed statement provided by each such employee affirming that he or she has read a copy of this Order, understands it, and intends to comply fully with its provisions.

VII.

It is further ordered, That each respondent shall, within sixty days from the date of issuance of this Order, and annually thereafter, submit in writing to the Commission a report setting forth in detail the manner and form in which it intends to comply, is complying and has complied with the terms of this Order, and such additional information relating thereto as may from time to time reasonably be required.

VIII.

It is further ordered, That each respondent shall notify the Commission at least thirty days prior to any change in itself or in any Joint Venture that affects compliance with the obligations arising out of this Order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of

subsidiaries, or any other change in the corporations or Joint Venture.

IX.

It is further ordered, That the prohibitions of this Order shall terminate five years after the termination of manufacturing or sales of New Automobiles by all Joint Ventures.

Commissioners Pertschuk and Bailey voted in the negative.

STATEMENT OF CHAIRMAN JAMES C. MILLER III

On December 22, 1983, the Federal Trade Commission provisionally accepted for public comment a consent agreement concerning the proposed joint venture between General Motors Corporation and Toyota Motor Corporation ("the venture"). Under that consent agreement, which was accepted after one of the most thorough and intensive antitrust reviews in Commission history, GM and Toyota may only undertake the joint venture subject to safeguards limiting the venture's scope and preventing the exchange of competitively sensitive information not required to achieve the legitimate objectives of the venture.

Over one hundred comments were received concerning the proposed consent agreement. None of these comments raised any significant new facts or substantive arguments beyond those already considered by the Commission. Because I believe the consent agreement, as modified today by the Commission, permits the venture's procompetitive benefits while minimizing anticompetitive concerns, I have voted to give final acceptance to it.

In analyzing the joint venture, it is important to separate reality from rhetoric. The Fremont venture is a limited production joint venture, not a merger of GM and Toyota. The extent of continuing competition between the companies dwarfs the limited area of cooperation represented by the venture. The FTC's approval of the joint venture, subject to the safeguards of the consent order, does not, as some have charged, ignore the antitrust laws, nor does it turn them upside down. Rather, it represents a careful application of antitrust principles to the specific facts at hand. The goal of the Commission's antitrust review has been to protect competition, and hence consumers. We've also been very sensitive to the substantial gains to competition and consumers projected by the venture under the safeguards incorporated in the consent agreement.

In evaluating the proposed consent agreement, the Commission weighed a number of possible competitive concerns. These included

the effect of the joint venture pricing formula, the possibility of tacit or explicit collusion resulting from the venture, and the venture's effect on Toyota's incentives to enter into production in the United States. Nothing in the comments received alters my preliminary assessment that with the safeguards incorporated in the consent these possibilities do not represent significant antitrust dangers. Let me explain.

Without the restraints incorporated in the consent agreement, the Fremont venture does raise two potentially troubling issues: the venture's effect on GM's incentives to continue alternative production of small cars, and the possibility of anticompetitive information exchanges that are unnecessary to achieve the legitimate purposes of the joint venture. To address these concerns, the Commission has incorporated certain safeguards in the consent agreement. The joint venture's production at the Fremont plant has been restricted to ensure that GM would retain incentives to fill the remainder of its small car needs from other sources. Expansion of the venture would be permitted only if approved in advance by the Commission.

To ensure that the joint venture were not used to facilitate the exchange of competitively sensitive information unnecessary to its operation, the exchange of certain information was prohibited, and record-keeping and reporting requirements concerning exchanges of other information were imposed to ensure continued, close monitoring of the venture's future operations.

As a result of the public comments received and our further analysis, the Commission has determined to broaden slightly both the scope of prohibited information exchanges and the record-keeping requirements by adding product development and engineering activities to the other categories of restricted information. Although this modification may result in some additional burden to the venture and its parent firms, the additional relief appears warranted to ensure that the Fremont venture is in fact confined to its efficiency-enhancing effects. The combined effect of the consent agreement provisions will permit the Commission to monitor the venture's conduct and to detect possible antitrust problems in sufficient time to prevent any (potential) anticompetitive effects.

Against these concerns, it is important to weigh the three major procompetitive benefits that are likely to result from the joint venture. First, the Fremont venture will increase the total number of small cars available in America, thus allowing consumers a greater choice at lower prices, despite present restrictions on Japanese imports. Second, the joint venture car will cost less to produce than if GM were forced to rely immediately on some other production source. Finally, the joint venture offers a valuable opportunity for GM

complete its learning of more efficient Japanese manufacturing and management techniques. Moreover, to the extent the Fremont venture demonstrates the Japanese system can be successfully adapted to the United States, the venture should lead to the development of a more efficient and competitive U.S. industry. Evidence obtained during the Commission's investigation persuasively establishes that a successful experiment at Fremont could serve as a predicate for other domestic auto makers and their unionized employees to work out similar flexibility in work rules and practices.

As indicated by the staff memoranda and consultants' reports that were placed on the public record, the Commission's review of the Fremont venture has been thorough and painstaking. The attorneys and economists who investigated the joint venture should be commended both for the quality of their analysis and the professionalism that they have shown in carrying out their duties despite intense public interest in this matter and grossly distorted criticism from some quarters. The public comments received concerning provisional acceptance of the consent agreement contain no new information or analyses to alter the Commission's preliminary determination that, with the safeguards incorporated in the modified consent agreement, the Fremont venture offers substantial benefits to competition and U.S. consumers without incurring significant anticompetitive risks. To ensure these benefits are realized by American industry and American consumers, I have voted to give final acceptance to the consent agreement as modified.

DISSENTING STATEMENT OF COMMISSIONER PERTSCHUK

The Commission's final acceptance of this consent agreement is a gift from the American public to GM and Toyota's shareholders and Toyota's workers. Based on highly speculative "learning efficiencies," which—if they exist to any degree—are obtainable in less anticompetitive ways, the Commission has approved an arrangement whereby GM and Toyota will cooperate in setting price levels as well as sharing information about the most sensitive commercial subjects. Aside from setting a new antitrust standard—one which allows virtually any automobile production joint venture imaginable—the most likely result is upward pressure on GM and Toyota automobile prices, with other manufacturers' prices following along.

I agree with the majority on one point: the comments received did not raise questions about any of the fundamental factual assumptions which led three Commissioners to hail the joint venture as a boon to productivity and two Commissioners to protest it as likely to reduce competition. In my view, the conclusion that GM can accomplish any

legitimate objectives of the joint venture through less harmful ways is as sound as ever. The question—why Toyota rather than a smaller Japanese partner—remains unanswered. The Bureau of Economics provides speculative estimates of the marginal gain from GM's joining hands with Toyota, as opposed to Isuzu or others, but these estimates deserve the healthiest of skepticism. They are based on the highly unrealistic assumption that Toyota's lower cost structure can be transferred intact to U.S. assembly.

A key to the frailty of the assumption that a Toyota partnership is unique is illustrated by Ford and Chrysler's argument that, if Toyota's technology were really so special, the acquisition of this essential knowledge by the leading American firm might be anticompetitive in itself. Staff's answer is that: "There are other very practical ways for [Ford and Chrysler] to learn Japanese methods . . . for example, a joint venture with Mitsubishi." (BC staff memo at 15) In other words, our staff would like to have it both ways: Toyota's technology is so unique that GM should be allowed to choose it as a partner in spite of competitive risks, but it is *not* so special that Ford and Chrysler can't learn essentially the same technology in other ways.

The key role of the import quotas is also reconfirmed in staff's latest analysis. The voluntary restraint agreement prevents other Japanese manufacturers from offsetting price increases which stem from any price coordination between GM and Toyota and helps protect the American oligopoly from more vigorous price competition. This buffer against competition is a major reason Toyota dealers are able to charge a premium of $2,000 to $4,000 above list price. Further, staff predicts that import restraints are unlikely to disappear quickly: "As long as the Japanese cost advantage remains substantial, Japanese automobile exports seem likely to be limited in some fashion, *i.e.* ar extended VRA, a legislated import quota, or domestic content require ments." (BC staff memo at 11).

But, aside from the fact that the VRA increases the anticompetitiv potential of the joint venture, what is its relevance to antitrust ana ysis? The staff continues to justify the joint venture, in part, becau it *evades* the VRA: ". . . the joint venture *does* increase the mix small cars available to the American public by circumventing exi ing, and probable future, import limitations." (BC staff memo at I cannot accept this line of reasoning, which amounts to elevating t evasion of national policy to an antitrust defense.

The staff's analysis contains other speculative assertions to supp the notion that there were no reasonable alternatives to GM's join hands with Toyota. For example, staff argues that a joint vent with Isuzu would not produce the same "labor demonstration effe as a GM-Toyota venture because, since GM owns a substantial sl

of Isuzu, the "UAW would likely perceive Isuzu as GM's 'alter ego' under the labor laws, and be unwilling to grant significant concessions." (BC staff memo at 17) The staff does not provide evidence for this theorizing about the fundamentally different reactions of the UAW to a GM-Toyota rather than GM-Isuzu joint venture, and I suspect the argument is principally speculation.

The Modification

The prospective futility of the consent agreement is highlighted by the modification to the order. All the Commissioners, I believe, agree that the risks to competition from the joint venture stem primarily from information exchanges, involving price, output decisions, product innovation, marketing plans, etc. In recognition of the fact that sensitive information is *inherent* in the venture, the consent agreement does not—and logically cannot if the venture is allowed to proceed—prevent this type of information exchange. Consequently, the agreement requires GM and Toyota to keep records of communications about model changes, design changes, product designs, sales or production forecasts or plans, and costs of GM or Toyota products supplied to the joint venture. (*See* paragraph V and VI of the order)

The modification approved by the Commission adds "development or engineering activities" to this list of types of communications for which records must be kept. The fact is, however, we could ask GM ınd Toyota to keep records on *all* communications about *any* subject ınd the result would be file cabinets of documentation of information ·xchange that is likely to reduce competition between the two compaies but which will not be prohibited under the order because they are art and parcel of the joint venture. Moreover, the record of informaon exchanges is certain to reflect a carefully condensed version of formation transfers, one that will not necessarily indicate fully the bject and scope of the exchange. Further, we can assume some formation exchanges will be informal and casual and, despite good th of the companies' compliance officers, never be memorialized in required records. I do not question the sincerity of the Commission ff in making this modification, but it should provide little comfort he public.

Early Termination

troubling aspect of the Commission's procedure in this case is the ting of "early termination," that is, the Commission's decision to inate the waiting period provided in the Hart-Scott-Rodino Act ıat GM and Toyota could consummate their transaction even gh the waiting period had not expired. Except for a cryptic refer- in the *Federal Register* of March 2, 1984 [49 FR 7870] which even

reporters following this matter closely missed, the decision to grant early termination was never announced by the Commission or the companies. Despite the arguments of the Chairman and the Bureau Director, I believe the Commission's affirmatively allowing GM and Toyota to consummate the venture weeks before final acceptance of the agreement, and in fact before the end of the comment period, effectively foreclosed our ability to obtain a preliminary injunction if the Commission had decided to reject the agreement. Even though that issue is now moot, since the agreement has become final, the issue of when the Commission grants early termination will arise again and deserves close examination by staff within the Commission and by outside observers.

Conclusion

In summary, the basic issues are the same. Everyone recognizes significant antitrust risks. Otherwise there would be no need for the consent agreement. However, the majority of the Commission insists that the benefits of GM learning Toyota's production techniques—and the marginal benefit of learning from Toyota rather than another partner—outweighs these risks. I continue to believe that the Commission has underestimated the likelihood of price coordination and risks to competition and, further, that any learning through joint production can be accomplished in less harmful ways. The principal incentives driving this joint venture are 1) the ability of GM to obtain, at lower cost than building on its own, a popular and high quality car, built principally in Japan, to carry the GM nameplate; and 2) the ability of Toyota to achieve profits from sales of components and cars in the U.S. despite the voluntary restraint agreement. These are perfectly understandable objectives, but the antitrust laws exist to redirect business behavior when what is good for individual companies is not good for everyone else.

DISSENTING STATEMENT OF COMMISSIONER PATRICIA P. BAILEY

The Commission received a great number of public comments this matter, but I agree that they produced no significant new inf mation or analysis. That being so, I see no reason to modify original conclusion that this combination of two powerful and di competitors cannot be sanctioned under the antitrust laws. The m agement "efficiencies" which supposedly justify it are not the so cost savings which merit the discretionary consideration of antit enforcers, and the value ascribed to them is more a product of frie guesswork than verifiable calculation. The consent order doe prevent information exchanges on numerous competitively sen

subjects, and it embodies a formula for establishing the wholesale price for the joint venture car which is very likely to reduce retail price competition between GM and Toyota.

Thus, the concerns which led me to dissent from the initial acceptance of the consent agreement in this matter remain valid, and I attach here a copy of the statement I issued at that time.

DISSENTING STATEMENT OF COMMISSIONER PATRICIA P. BAILEY
DECEMBER 22, 1983

The Commission majority has today voted to accept a consent agreement with the General Motors and Toyota Motor Corporation which does not cure the antitrust infirmities of their proposed joint venture. I have, therefore, dissented from that decision.

I am acutely aware of the arguments favoring this joint venture. Certainly any knowledgeable observer would agree that American car companies, facing stiff foreign competition in the United States market, need to improve production techniques in order to strengthen their competitive positions into the future. The decision for this Commission, however, is whether a joint venture such as that proposed by these companies is sanctioned by the nation's antitrust laws. I do not believe by any stretch of the imagination that it is. Whether it *should* be is not for me to say. That argument should be posed in another forum.

In any event, to claim that the consent agreement accepted today, which allows a ɔartial combination of the first and third largest car companies in the world, solves any ɩerceived antitrust problems with the venture, is simply, in my view, not the case. ndeed, both companies have acknowledged publicly that the consent merely restates ıe essential conditions of their original agreement.[1]

The reasons for my decision in this matter are summarized below.

Effect of precedent

There should be no mistake about the effect of the Commission's decision today. The nciples of legality for this joint venture cannot be limited to one hermetically sealed ɩeriment in Freemont, California. This joint venture is between the largest U.S. car ducer and the largest Japanese car producer—both price-leaders for their makes of ; thus, any similarly-structured joint venture between any other members of the ıstry must be sanctioned. How could we deny to other companies what we have ıorized for the industry giants? In effect, this is rule-making for the industry.

is predictable that several features of this joint venture will result in a reduction mpetitive vigor between GM and Toyota. Concern about that should deepen when trong likelihood that these features will be copied in "me-too" joint ventures en the remaining domestic car companies and foreign partners is considered. This venture, then, must be seen as a prototype for the industry that may well produce es which are quantitatively more significant than those caused by it alone. The ıdustry is clearly undergoing a concentration trend; the question is whether the l Trade Commission should accelerate that process by an action which will inevitably touch off a reactive pattern of strategic pairing between car manufac- That is especially a troubling concern since the purpose behind these coopera-

g., *New York Times*, December 21, 1983, p. D1 "If it gives them [the FTC] some comfort and seals the it's OK." (quoting General Motors Chairman Roger Smith); *Washington Post*, December 21, 1983, p. D1 ise terms of the order . . . are likely to include no more than a written agreement to abide by three f the venture that have already been publicly announced." (According to Toyota's U.S. Counsel.)

tive ventures would not be the creation of a new competitor, but rather a decrease in the overall number of market participants, leading to increased likelihood of tacit, if not actual, collusion.[2]

Nature of the transaction

Some joint ventures can be highly pro-competitive, although this is not likely to be one of them. Particularly prized are ventures where the combination of the parent firms' resources achieves what neither can manage alone: an increase in pure research, a technological breakthrough, product innovation, or entry into a new market.[3] This joint venture has none of those output-enhancing features. Manifestly, neither GM nor Toyota is a new entrant into the automobile market. The car to be produced by this joint venture likewise is nothing new: it is a derivative of Toyota's Corolla. The design differences between the two models are "modest" and beneath the sheet metal the cars will be "essentially identical." (BC staff memo, I, 10)

On its face the GM/Toyota arrangement falls into the most suspect category of joint ventures:

> Of all joint ventures, the horizontal is inherently the most anticompetitive, because it involves the formation of a joint venture in the markets in which the parents operate. Under such circumstances, antitrust compliance and enforcement problems are acute: if the arrangement is allowed to operate at all, the parents, through their representatives in the joint venture, will necessarily agree on prices and output in the very market in which they themselves operate. Brodley, *supra,* 95 Harv. L. Rev. at 1522.

Or, as another commentator puts it:

> When one or both parent firms actively compete in the same product and geographic market as the joint venture, the inevitable coordination of competitive activities between parent and partly-owned subsidiary and the resultant stifling of aggressive behavior of the joint venture should be treated under typical cartel rules. Pitofsky, *supra,* 82 Harv. L. Rev. at 1035–1036.

Initial concerns about the joint venture's anticompetitive potential are only intensified when it is analyzed in its market context. Our economic and legal staffs have calculated the Herfindahl indices for various probable markets. They range from a low of 1262 (dollar sales, subcompact cars) to a high of 2413 (unit sales, all cars). (BC staf memo VI, 9; BE memo, Appendix H). This means that a plausible market is at bes moderately concentrated, and at worst highly concentrated—but in any event struc tured in a way which mandates a very hard look at any combination of competitor: Entry barriers to this market are obviously quite high, consisting of economies of scal in production and distribution and, for foreign car manufacturers, import limitation (BC staff memo VI, 22, 26). Within this oligopolistic market, GM holds the longstandi leading market share (44% as compared with the 16.7% of its closest rival, Ford) a is the price leader among domestic auto producers. (BC staff memo, VI 10, 12)[4] Toyo holds the same price leader position among Japanese importers. (BE staff memo, V

[2] Professor Pitofsky has observed that a market setting with numerous joint ventures raises particular antit concerns. Pitofsky, Joint Ventures Under the Antitrust Laws: Some Reflections on the Significance of *Penn-C* 82 Harv. L. Rev., 1007, 1033 (1969).

[3] U.S. Department of Justice Antitrust Guide Concerning Research Joint Ventures, 466 CCH Trade Reg. Rep 35 (December 1, 1980); Brodley, Joint Ventures and Antitrust Policy, 95 Harv. L. Rev., 1523 (1982); Pitofsky *cit.*

[4] General Motors is clearly the price leader among domestic auto producers, both because it announces p first and because its prices virtually dictate Ford and Chrysler decisions. (BC staff memo, VI, 12)

15). Toyota is the fourth largest car manufacturer in the U.S. and the third largest in the world. (BC staff memo, III, 1).[5]

In short, this is a market which is prone to effective collusion, and a collaboration between two major competitors resembles a partial merger more than a true joint venture. In these circumstances the degree of anticompetitive risk and the genuine need for the venture must be stringently examined. *See, e.g., U.S. v. Penn-Olin,* 378 U.S. 158, 170–72 (1964); *Brunswick Corp.,* 94 F.T.C. 1174, 1265–66 (1979), *aff'd and modified on other grounds sub. nom., Yamaha Motor Co. v. FTC,* 657 F.2d 971 (8th Cir. 1981), *cert. denied,* 102 S.Ct. 1768 (1982).

Anticompetitive Risks

The two principal aspects of the joint venture which I fear will lead to blunted competition between the two companies are the transfer price formula and the ongoing exchange of a broad range of product planning, engineering design, and marketing information.

The price which the joint venture will charge GM for the car is calculated by a formula which consists of a weighted average of wholesale prices of competitive small cars. Toyota's Corolla is given special weight in the formula. Simply between GM and Toyota this formula reduces price competition, because any price cuts Toyota gives its dealers must be passed on to GM, with a corresponding reduction in Toyota's joint venture profits. Consequently, Toyota's incentives are to raise the Corolla price, knowing that such a price rise is incorporated into the cost of the joint venture car to GM; and knowing, moreover, that both it and GM are the industry price leaders, so that competitors are likely to match the higher prices. The competitors' price hikes in turn are reflected in the transfer price formula—and so the formula assures an ascending spiral of lockstep pricing,[6] although without explicit cooperation or collusion.[7]

It is important to note that infirm price competition between the Corolla and the joint venture car can infect the prices on other car models. Car manufacturers who offer a full line of cars maintain price differentials between various carlines and models. (BC staff memo, VIII, 12). GM will undoubtedly follow this practice and seek to keep a consistent dollar gap between the joint venture car and the next biggest nodel, and between each model further up the line. Thus a rise in the price of the joint 'enture car will force reactive price rises all the way up the GM line and, because of ;M's price-leader position, the same ripple effect can be expected in competitive car nes. Consumers will still be offered a choice of prices, but the overall level of price mpetition will be artificially elevated.

The Bureau of Competition Director has dismissed the price rises flowing from the ansfer formula as too small to worry about. However, the problem is not so much how uch prices rise, but the fact that there has been a major change in car manufacturers' centives to engage in price competition. Because there will be several new disincen- 'es to price competition at work in the market, cartel stability will be encouraged. Alternatives to this competitor-based pricing formula apparently were never ex- red by the parties. (BC staff memo, VIII, 7). The consent does not cover the matter all. In particular, there has been no consideration of an alternative, suggested by fessor Salop, of a price escalator provision that is triggered by a cost index which

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1 the subcompact portion of the U.S. market which is most directly affected by this joint venture, Ford, Toyota ;M are ranked respectively first, second and third, with the following market shares: 19.10%, 16.06%, 14.41%. taff memo, VI, 96).

ie phrase "lockstep" pricing was first used by one of Toyota's counsel when describing to his client a probable of the transfer price formula. (GM 25945, quoted in Koch memo, 30)

r a more vigorous analysis of this phenomenon, *see* the comments of John Kwoka (Professor of Economics, e Washington University; Consultant to the F.T.C.) and Steven C. Salop (Professor of Economics, Georgetown rsity Law Center; Consultant to the Chrysler Corporation).

is not under Toyota's control yet is highly correlated with Toyota's costs. Such indexed contracts have been used for the purchase of major car components[8] and are apparently common to various industries. I fail to see why the Commission was not provided with a comparative analysis of all practical pricing formulae.

Finally, I should point out that the transfer price formula is a bit of a red herring, since the agreement between GM and Toyota allows them to negotiate directly an appropriate selling price whenever the transfer formula yields a selling price which is at significant variance with then current market conditions. The consent agreement would not prevent operation of this proviso.

Unfortunately, even if a well-drafted consent could cure the transfer price infirmities of this joint venture, I would still object to it. That is because I see the overriding problem as incurable. This joint venture, by its very nature, necessitates coordination of GM and Toyota product marketing and research efforts. The joint venture will produce a car for GM which is manufactured according to Toyota production techniques. The most significant components of the car, representing well over half the value of all its parts and material, will be produced by Toyota. How could the joint venture not act as a clearinghouse for exchanges between customer (GM) and supplier (Toyota) as to what the end product should and could be? The twelve-year life of the joint venture covers two complete model cycles, and certainly there are a host of changes in car features from year to year. Improvements in the vehicle's designs and technology will be known to the parent companies well in advance of public announcements or even industry gossip. Moreover many features on small cars are common to large portions of the entire fleet; therefore knowledge that either parent can produce, say, extended corrosion protection or a significantly lighter engine, gives a window onto overall marketing strategies, not "just" plans for compact and subcompact cars.

It has been argued that GM and Toyota are such fierce competitors that they will jealously guard all their secrets. This argument ignores the fact that, even if a major technological breakthrough or some other "hush hush" project were carefully isolated, merely in the legitimate daily operations of the joint venture GM and Toyota can glean enough additional hard data to vastly improve educated guesses about each other's competitive activities. There does not have to be a complete swap of technical plans for competition to be dulled. For example, in the course of negotiations, Toyota has *already* supplied GM with certain detailed product information which otherwise would certainly not be exchanged between these competitors. (BC staff memo, VIII 17–18; Kwoka, 37–38) It may be too late for GM to match certain technological improvements, but it certainly can adjust its marketing efforts to defuse any Toyota impact. This would leave it free to focus its competitive energies on car companies other than Toyota—a strategic luxury not available to Ford, Honda, Chrysler *et al.*

As a final example of why I have trouble accepting this rosy picture of uncompromising competitors who will never be tempted to do each other favors, consider that Toyota *has already offered, and GM has acted upon,* suggestions on retail price differentials for the joint venture car relative to the Corolla. (BC staff memo, VIII, 18–19; Kwoka, 38–39).

I cannot improve upon the BC staff's summary of these instances of the most competitively sensitive information exchange:

> The point here is that the joint venture facilitates discussions about price that GM conceded were forbidden and this is the only example we happen to know about; should the joint venture proceed, others may well occur due to the introduction of new models and/or changes in the product itself. . . . Concern over the occasion and

[8] For example, Chrysler has furnished us with examples of two such contracts which it has with Mitsubishi and Volkswagen, both for the supply of automotive engines.

necessity for such information exchanges arises again when a new joint venture model needs to be negotiated after several years. (BC staff memo, VIII, 19).

The consent agreement does not cure this problem. It specifically allows the parties to exchange information "necessary to accomplish . . . the legitimate purposes of functioning of the Joint Venture." This is a highly significant loophole. What is "necessary" or "legitimate" is determined in the first instance by GM and Toyota. Their threshold sensitivity on these points is demonstrated by the fact that GM's counsel has represented that the information exchanges I just described were not used for any purpose other than determining suitable product options for the joint venture. (BC staff memo, VIII, 17–18).

Alleged Procompetitive Benefits

We are assured that the joint venture will produce "efficiencies" which will offset any anticompetitive effects such as I have described above. In the FTC merger guidelines we defined an efficiency as a cost saving that could not be obtained unilaterally by either company, but instead required a pooling of resources. The efficiencies alleged in this matter do not meet even that general description.

Staff of the Bureau of Economics conclude that the joint venture will increase industry output and is therefore procompetitive. Such a conclusion, I note, requires a rejection of GM's own estimates to the contrary. Nonetheless, I am not convinced that staff has proved this social efficiency, as distinct from private benefits to GM and Toyota. There is no doubt that GM could use a new small car in order to maintain or increase market share in the compact/subcompact market, as well as to safeguard its large car sales by accrual of CAFE credits.[9] However, it is highly doubtful that the GM/Toyota venture arrangement represents additional output that would not come into being without the joint venture. The best evidence on this point is GM's own predictions that the sales of the joint venture car will come largely at the expense of other GM and Toyota vehicles. The joint venture car is expected to divert sales especially from GM's Chevette and mid-size "J" car. (BE staff memo, VIII, 3–4; Kwoka memo, 51) Our economics staff finds "somewhat puzzling" that GM assumes *no* net increase in industry sales as a result of the joint venture, and deals with the puzzle by summarily rejecting GM's estimates and producing its own competitive supply and demand models. (BE staff memo, VIII, 5–14). I am troubled by this willingness to set aside a damaging admission, as well as by several of the assumptions underlying the BE calculations.[10] Also, regardless of what minimal[11] output effects the joint venture may have, those same effects could be achieved in large part through alternatives. As Professor Kwoka demonstrates, absent the joint venture GM would very likely satisfy its small car needs by a variety of options, including domestic assembly of the 'R' car now being produced by GM's Japanese affiliate Isuzu, and improving and retaining the Chevette. (Kwoka memo, 47–55A; Muris memo, 31). Similarly, though with less certainty, we can predict that Toyota would have to pursue U.S. manufacturing options, absent the joint venture. (Toyota's two largest Japanese rivals, Honda and Nissan, have already taken that step.) Naturally these options are more expensive and presumably not

[9] The Corporate Average Fuel Economy ("CAFE") statute, part of the Energy Policy and Conservation Act of 1975, sets annually escalating efficiency standards for the average of each domestic car manufacturer's fleet. The law provides stiff fines for failure to meet the standard. CAFE essentially conditions the sale of a larger car on the sale of a small car. Firms need to lower their fleet average and so continue selling the more profitable large cars.

[10] *See* critique in Koch memo, pp. 38–39; alternate calculations by Professor Kwoka at 31–35, 44–55.

[11] Ironically, BE's favorite justification for the joint venture has been hamstrung by the only provision of the consent which changes the original obligations of the parties. The formerly open-ended production commitment has been capped at 200,000 cars.

as attractive to the companies, but from an overall industry viewpoint they are preferable to simply letting GM acquire 200,000 units of Toyota's production capacity for twelve years.

The second major[12] justification for the joint venture translates even less easily into an "efficiency" benefit. That is the claim that GM needs to have "hands-on" experience with Japanese management techniques in order to produce a cheaper car. No one denies that the Japanese have a significant cost advantage (approximately $2000) in the production of cars. However, it is not possible to isolate and quantify many of the sources of that advantage, other than differences between labor wages in the automotive industries of the U.S. and Japan, which account for 40% of the cost advantage. (Kwoka memo, 11). GM concedes that Japanese advantage does not derive from superior products or manufacturing hardware. I must ask therefore, regardless of what value we assign to management skills, whether the fact that they differ justifies this sort of close cooperation between rivals. For example, if Ford had a 30% cost advantage over GM, attributable solely to some Ford management mystique, would the antitrust laws permit GM to learn Ford's special production techniques by jointly producing a Lincoln/Cadillac-type car? I think not.

Conclusion

In summary, then, if this joint venture between the world's first and third largest automobile companies does not violate the antitrust laws, what does the Commission think will? This is surely the question that potential joint venture partners will be asking themselves. In this decision, the Commission has swept another set of generally recognized antitrust law principles into the dustbin, using again the incorporeal economic rhetoric that now dominates Commission decision-making. In this case, the decision results in the blessing of a business proposal that is both breathtaking in its audacity and mind-numbing in its implications for future joint ventures between leading U.S. firms and major foreign competitors that seek to lend a friendly helping hand.

Perhaps in uneasy recognition of the controversy this antitrust generosity would otherwise ignite, the majority has thrown Br'er Rabbit into the briar patch by penciling in a last minute consent order that the proposed joint venture partners have themselves said merely restates the main features of the private agreement already existing between them. This will fool no one who has even a passing familiarity with the real issues in this antitrust decision.

STATEMENT OF COMMISSIONER GEORGE W. DOUGLAS

The Federal Trade Commission has always viewed with utmost seriousness its commitment to consider the public's comments prior to issuing consent orders. The Commission's concern is particularly relevant in matters such as this, where many believe that the Commission's decision will have ramifications that transcend by far the immediate interests of the directly affected parties.

Although the Commission received in excess of a hundred individual comments following the announcement of its preliminary decision, it is significant that none of the comments raised any new facts or concerns that had not already been discussed and analyzed at length

[12] GM has characterized the learning experience as the primary goal of the joint venture; BC staff is skeptical as to its value. (BC staff memo, II, 31–40, 48–52).

by both the Commission and its staff. Given the diversity of public opinion and the heterogeneity of interests in this matter, the fact that no new issues have been raised by the public comments is testimony, I believe, to the thoroughness and objectivity of our staff's analyses.

Prior to coming to its decision, the Commission reviewed and analyzed an extensive collection of documentary evidence, outside submissions, and exhaustive staff analyses. Because of the unique circumstances surrounding this case, edited versions of that material has been made available to the public. In its review of this material the Commission was confronted—perhaps to a degree never previously encountered—with a host of intriguing and thorny concerns touching upon such issues as international trade policy, labor relations, and local employment conditions, among others—many of which went far beyond the customary bounds of traditional antitrust concerns.

Wisely, I believe, the Commission eschewed entanglement in these side issues and focused on the factual evidence relating to the joint venture's potential effects on competition. With this as a reference standard, the Commission, following its review of the evidence, was unwilling to approve the joint venture unless General Motors and Toyota agreed to institute several important anticompetitive safeguards limiting information exchanges and the number of automobiles that would be made available to General Motors. It is significant that only after these safeguards were agreed to by the two partners would the Commission give its tentative approval to the joint venture.

The Commission's action today promises substantial benefits for American consumers, for American labor, and for the American manufacturing sector in general.

The American car-buying public stands to benefit because the joint venture serves to increase both the total number of small cars available to the public and domestic small car manufacturing capacity. This increase in domestic productive capacity and productive efficiency will enhance competition in the sale of small cars and strengthen the competitive posture of American automobile manufacturers.

While the majority of the Commission remains convinced that the procompetitive effects of this joint venture overwhelm any of the possible anticompetitive concerns that have been raised in this matter, I should caution against the drawing of any undue inferences from today's decision. Each case that comes before the Commission is analyzed and decided upon based on its own merits, and it should go without saying that the circumstances in this case are sufficiently unique as to augur against making any inferences as to how the Commission might view other production joint ventures.

STATEMENT OF COMMISSIONER TERRY CALVANI

On December 22, 1983, I voted in favor of provisionally accepting a consent agreement to permit General Motors Corporation and Toyota Motor Corporation to engage in a limited manufacturing joint venture in Fremont, California. At that time, I indicated that I looked forward to receiving and reviewing public comments on the joint venture under the Hart-Scott-Rodino Act procedures and Commission rules. The Commission has received over one hundred comments on the provisionally accepted consent order. After carefully reviewing those comments, several things are apparent. First, the Staff has done an exhaustive job analyzing the competitive aspects of the joint venture. The major concerns raised in the comments had already been identified by the Staff in their investigation, and the resulting consent order addressed virtually all of these concerns. Second, to the extent anyone feared the proposed consent will not prevent collusion between General Motors and Toyota, the modification adopted today should allay those fears. Limiting information exchanges between the two companies in product development and engineering to communications necessary for producing the joint venture vehicle closes the only potential channel for collusion not covered by the proposed consent. Moreover, the record keeping requirements associated with this change provide an effective method for monitoring compliance.

Although the joint venture presents some potential antitrust problems, the modified consent order addresses the major antitrust concerns that arise from the joint venture. The modified consent prevents collusion between the companies in long term strategic planning as well as in the short term, without unduly interfering with the substantial procompetitive benefits that I believe will result from the joint venture.

IN THE MATTER OF

RENTACOLOR, INC., ET AL.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS

Docket 9163. Complaint, Nov. 1, 1982—Final Order, April 16, 1984

This order requires two Newington, Conn. firms engaged in the public leasing of color television sets and other video equipment, among other things, to cease representing in advertising the amount of any payment, the number of payments required, or that no downpayment or other payment is required at the consummation of a lease, without also including the disclosures required by the Consumer Leasing Act and Sections 213.4 and 213.5 of Regulation M. The order additionally bars the companies from failing to properly include statutorily-required disclosures in contracts and other leasing instruments; and dismisses the complaint against the individual respondent.

Appearances

For the Commission: *Ronald G. Issac* and *Justin Dingfelder.*

For the respondents: *Basil J. Mezines* and *Michael G. Charapp, Stein, Mitchell & Mezines,* Washington, D.C. and *Brandon J. Hickey, Murtha, Cullina, Richter and Pinney,* Hartford, Conn.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Truth in Lending Act and the implementing regulations promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Rentacolor, Inc., a corporation, Rentacolor U.S.A., Inc., a corporation, and Brian N. Cawley, individually and as an officer of said corporations, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and the implementing regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Rentacolor, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 3549 Atlantic Avenue, Long Beach, California.

Respondent Rentacolor U.S.A., Inc. is a corporation organized, ex-

isting, and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located at 262 Hartford Avenue, Newington, Connecticut.

Respondent Brian N. Cawley is president of each of the corporate respondents. He formulates, directs and controls the acts and practices of said corporate respondents, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent Rentacolor U.S.A., Inc. [2]

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the renting of color television sets and other video equipment to the public. The products are generally leased on a 12-month basis (although there are a few leases on a 3 or 6-month basis). The customer can terminate the lease by giving the respondents 30 days notice at any time after the initial term of the lease is over.

PAR. 3. In the ordinary course of their business as aforesaid, respondents regularly lease, or offer to lease video equipment by means of a consumer lease, as "consumer lease" is defined in Section 226.2(mm) [213.2(a)(6)] of Regulation Z[M], the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System [Cited in brackets is the revised Federal Reserve Board citation which may be used after April 1, 1981 and becomes mandatory after October 1, 1982].

PAR. 4. Subsequent to March 23, 1977, the effective date of the Consumer Leasing Act, respondents have caused to be published advertisements, as "advertisement" is defined in Section 226.2(d) [213.2(a)(2)] of Regulation Z[M], to aid, promote, or assist directly or indirectly their consumer leases. Certain of these advertisements have stated the amount of the periodic payment involved or that no downpayment is required without also stating each of the following:

1. That the transaction advertised is a lease, as required by Section 226.10(g)(1) [213.5(c)(1)] of Regulation Z[M];

2. The total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments are required, as prescribed by Section 226.10(g)(2) [213.5(c)(2)] of Regulation Z[M];

3. The number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease, as required by Section 226.10(g)(3) [213.5(c)(3)] of Regulation Z[M]; and

4. A statement of whether or not the lessee has the option to purchase the leased property and at what price and time, as required by Section 226.10(g)(4) [213.5(c)(4)] of Regulation Z[M]. [3]

PAR. 5. Subsequent to March 23, 1977, respondents, in the ordinary course of their business, have caused, and are now causing, their customers to execute lease agreements that bind the customer for a stated minimum term, usually 12 months. Respondents disclose certain cost information on the face of the lease contract above the place for the customer's signature. Certain other required lease information is disclosed on the reverse side of the lease contract.

By and through the aforementioned practice, respondents have, in certain instances:

1. Failed to make all of the required disclosures together, as required by Section 226.15(a) [213.4(a)(2)] of Regulation Z[M], on either:

(a) the contract or other instrument evidencing the lease on the same page and above the place for the lessee's signature; or

(b) a separate statement which identifies the lease transaction;

2. Failed to disclose the total amount of the periodic payments scheduled under the lease, as required by Section 226.15(b)(3) [213.4(g)(3)] of Regulation Z[M]; and

3. Failed to disclose whether or not the lessee has the option to purchase the leased property, as required by Section 226.15(b)(11) [213.4(g)(11)] of Regulation Z[M].

PAR. 6. Pursuant to Section 103(s) of the Truth in Lending Act, respondents' aforesaid failures to comply with Sections 226.10(g) [213.5(c)] and 226.15 [213.4] of Regulation Z[M] constitute violations of that Act and pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

INITIAL DECISION BY

ERNEST G. BARNES, ADMINISTRATIVE LAW JUDGE

SEPTEMBER 15, 1983

PRELIMINARY STATEMENT

On November 1, 1982, the Federal Trade Commission issued its complaint in this matter alleging that the corporations Rentacolor, Inc. and Rentacolor U.S.A., Inc. (hereinafter sometimes referred to jointly as "Rentacolor") and their president, Brian N. Cawley, individually and as an officer of the aforesaid corporations (hereinafter sometimes referred to [2] collectively with Rentacolor as "respondents"), have violated Sections 226.10(g) and 226.15 of Regulation Z (12 C.F.R. 226),[1] the implementing regulation of the Truth in Lending Act

[1] As a result of Congress' enactment of the Truth in Lending Simplification and Reform Act (Title VI of the

(15 U.S.C. 1601–1667), and Section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

The complaint alleges that subsequent to March 23, 1977, the effective date of the Consumer Leasing Act, respondents caused advertisements to be published to aid, promote, or assist their consumer leases. The advertisements stated either the amount of the periodic payment involved or that no downpayment was required without disclosing (i) that the advertised transaction was a lease, (ii) the total amount of any payment such as a security deposit or capitalized cost reduction required at the [3] consummation of the lease or that no such payments were required, (iii) the number, amounts, due dates or periods of scheduled payments under the lease and the total of such payments, and (iv) a statement of whether or not the lessee had the option to purchase the leased property and at what price and time, as required by Section 226.10(g) of Regulation Z. (Complaint ¶ 4)

The complaint also alleges that subsequent to March 23, 1977, respondents caused their customers to execute lease agreements that bind the customer for a stated minimum term, usually 12 months, and that failed to make all of the disclosures required by Section 226.15(a) of Regulation Z on either the same page of the lease contract and above the place for the lessee's signature, or on a separate statement identifying the lease transaction. Further, that the respondents failed to disclose, as required by Section 226.15(b) of Regulation Z, the total amount of the periodic payments scheduled under the lease and whether or not the lessee had the option to purchase the leased property. (Complaint ¶ 5)

The aforesaid alleged failures of respondents to comply with the provisions of Regulation Z are charged in the complaint as violations of the Truth in Lending Act and, pursuant to Section 108 of that Act, violations of the Federal Trade Commission Act. [4]

On January 3, 1983, respondents filed an Answer to the complaint denying all of the allegations of violations of law. Respondents also averred that (1) the complaint failed to state a claim upon which relief can be granted, (2) laches bar the Commission from maintaining this action, (3) the claim for relief is barred by the statute of limitations, (4) the Commission is estopped from seeking the relief sought in this proceeding, (5) the proceeding is not in the public interest because respondents' acts and practices are and have been for some time in

Depository Institutions Deregulation and Monetary Control Act, Pub. L. No. 96–221, 94 Stat. 168) on March 31, 1980, the Board of Governors of the Federal Reserve System revised Regulation Z, effective April 1, 1981, and consolidated the consumer leasing provisions into a separate regulation, Regulation M (12 C.F.R. 213). The complaint issued in this case uses Regulation Z as the principal citation for the regulatory provisions alleged to have been violated because compliance with Regulation M did not become mandatory until October 1, 1982. Section 226.10(g) of Regulation Z has become Section 213.5(c) of Regulation M and Sections 226.15(a) and 226.15(b) of Regulation Z are now Sections 213.4(a) and 213.4(g), respectively, of Regulation M. There were no substantive changes to these or any of the other consumer leasing regulatory provisions.

the past in conformity with the Consumer Leasing Act, (6) the proceedings are not in the public interest because the alleged acts and practices have been abandoned or modified prior to issuance of the complaint with no reasonable likelihood of resumption, (7) the violations do not constitute a proper basis for the granting of any relief because they are infrequent, isolated, and *de minimus,* (8) Brian N. Cawley is not a person subject to the requirements of the Consumer Leasing Act, (9) the alleged lease transactions are not subject to the Consumer Leasing Act, (10) the alleged violations were not intentional and resulted from bona fide errors notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, and (11) the alleged acts or practices were committed in good faith and in conformity with rules, regulations, or interpretations by the Federal Reserve Board, or by an official **[5]** or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals.

On January 21, 1983, a prehearing conference was held to clarify the issues and to establish a plan and schedule of discovery. At the hearing, counsel for the parties agreed to attempt to negotiate a stipulation of facts to expedite resolution of the matter. On April 12, 1983, counsel for the parties filed a stipulation of facts and waived the right to a formal hearing and to the introduction of documents not cited in the stipulation. The record was closed for the reception of evidence on May 16, 1983.

This proceeding is now before the Administrative Law Judge for decision based upon the complaint, the answer, the stipulation of facts and accompanying documents, proposed findings of fact and conclusions of law, and legal memoranda submitted by the parties. These submissions have been given careful consideration and, to the extent not adopted herein in the form proposed or in substance, are rejected as not supported by the record or as immaterial. After review of the entire record in this proceeding, the Administrative Law Judge makes **[6]** the following findings of fact and conclusions, and issues the Order set out at the end hereof.[2]

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[2] The findings of fact include references to supporting evidentiary items in the record. The supporting evidence cited in each instance is not necessarily all-inclusive of the record evidence. The following abbreviations have been used:

F. – Findings of this Initial Decision followed by the number of the finding(s) being referenced.
Stip. – Stipulations filed by the parties followed by the number(s) of the paragraph being referenced.
CX – Exhibits incorporated in the Stipulations followed by the number(s) of the exhibit being referenced.
RPF – Respondents' Proposed Findings of Fact, Memorandum of Law, Conclusions of Law, and Order.
RB – Reply Brief of Respondents To Complaint Counsel's Proposed Findings of Fact, Supporting Brief, Conclusions of Law and Order.

I. FINDINGS OF FACT

A. *Identities And Business Of Respondents*

1. Respondent Rentacolor, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of [7] the State of California. (Answer ¶ 1) It began doing business in the United States in 1973 and, at the time of issuance of the complaint herein, was doing business in California, Connecticut, Massachusetts, and Pennsylvania, with its principal office and place of business located at 3549 Atlantic Avenue, Long Beach, California. (Stip. 1) After submission of the Stipulations herein, Rentacolor, Inc. ceased doing business in California and changed its business address to 262 Hartford Avenue, Newington, Connecticut. (RPF, p. 4) Rentacolor, Inc. is the wholly-owned subsidiary of Rentacolor International, which operates television rental companies in 22 countries throughout the world. (CX 4A)

2. Respondent Rentacolor U.S.A., Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut. (Answer ¶ 1) It began doing business in 1979 and currently does business in California, Pennsylvania, Maryland, Michigan, Illinois, and Connecticut, with its principal office and place of business located at 262 Hartford Avenue, Newington, Connecticut. (Stip. 2)[3] [8]

3. Brian N. Cawley is the president and the chief executive officer of both Rentacolor, Inc. and Rentacolor U.S.A., Inc. He also is a member of Rentacolor's Board of Directors. He served in both capacities during the time the alleged violations cited in the complaint occurred. (Stip. 3; CX 4A) The Board of Directors formulates policy for Rentacolor and, as president, Cawley is responsible for implementing that policy. (Stip. 3)

4. Respondents are now and for some time in the past have been regularly engaged in the leasing of color television sets and other video equipment to the public for personal, family, or household use. (Answer ¶ 2; Stip. 4)

B. *Federal Trade Commission Staff Contacts With Respondents*

5. The Federal Trade Commission staff ("the staff") first contacted Rentacolor concerning its leasing business by letter of December 11, 1979. (Stip. 8) Rentacolor responded to the staff's letter with a letter from its counsel dated February 13, 1980. The documents identified as CX 2 thru CX 10, or copies thereof, were submitted as attachments to Rentacolor's letter. (Stip. 9)

[3] CX 14E, a copy of a Rentacolor advertisement, lists a New Jersey telephone number for New Jersey residents to dial. The record does not establish whether this advertisement was actually disseminated.

6. The staff subsequently contacted Rentacolor by letter dated March 6, 1980, to request that Rentacolor provide additional information concerning its operations and its corporate affiliations. (Stip. 10) Rentacolor's counsel **[9]** responded to this staff inquiry by letter dated March 21, 1980. (Stip. 11) Rentacolor's counsel sent the staff drafts of four new Rentacolor ads by letter dated March 27, 1980. The ads are identified as CX 14B–E. (Stip. 15)

7. On April 11, 1980, the staff met with Rentacolor's counsel and Brian N. Cawley to discuss Rentacolor's lease contract forms and its advertisements, and its plans for revising them. (Stip. 16) By letter dated April 23, 1980, Rentacolor's counsel sent the staff four more Rentacolor ads for its perusal. The ads are identified as CX 15B–E. (Stip. 17)

8. By letter of September 9, 1981, the staff again contacted Rentacolor. (Stip. 20) The documents identified as CX 19 thru CX 23 were mailed to the staff by Rentacolor's counsel under date of September 14, 1981, in response to the staff's letter of September 9, 1981. (Stip. 21)

9. On December 16, 1981, the staff met with Rentacolor's counsel and Brian N. Cawley in Washington, D.C. (Stip. 31) The Commission's complaint issued on November 1, 1982.

C. *Respondents' Lease Contracts*

10. From September 1979 to August 1980 and from August 1981 to the present, Rentacolor transacted lease agreements from **[10]** three to twelve months in duration. The majority of these lease agreements were for a minimum contractual period of twelve months. From August 1980 thru July 1981, Rentacolor transacted lease agreements solely for three months in duration. (Stip. 5; CX 4)

11. Rentacolor offers true operating leases. The contracts do not give the consumer the option to purchase the leased property. (Stip. 6; *see* CXs 5–6). Rentacolor charges an installation fee when the leased property is installed in the customer's home. The fee varies depending on the type of unit leased. (Stip. 7; *see* CX 6A)

12. Rentacolor U.S.A., Inc. uses and has always used the same lease contract forms that Rentacolor, Inc. uses. (Stip. 29)

13. Prior to August 1980, Rentacolor used the lease contract form identified as CX 5 to execute lease agreements with its customers. During this period, no other contract form was used. (Stip. 22; *see* CXs 6–10) Rentacolor began using the lease contract form identified as CX 22A–B in August 1980. (Stip. 23) Rentacolor began using the disclosure statement identified as CX 23 in July 1980. Prior to that time, no such disclosure statement was used. (Stip. 24) **[11]**

D. *Respondents' Advertisements*

14. Rentacolor U.S.A., Inc. and Rentacolor, Inc. use the same advertisements to promote their business. (Stip. 30)

15. CX 2, referring to a Rentacolor address in Wethersfield, Connecticut, and CX 3, referring to a Rentacolor address in New Britian, Connecticut, were mailed by Rentacolor to the staff by letter dated February 13, 1980. (Stip. 9; F. 5)

16. The advertisement identified as CX 11 was published in *The Washington Post TV* magazine for the week of December 2, 1979. (Stip. 12) The advertisement identified as CX 12 was published in *The Washington Post TV* magazine for the week of March 2, 1980. (Stip. 13) The advertisement identified as CX 13 was published in *The Washington Post TV* magazine for the week of March 30, 1980. (Stip. 14)

17. CX 14B–E are drafts of Rentacolor advertisements mailed by Rentacolor to the staff by letter dated March 27, 1980. (F. 6) By letter dated April 23, 1980, Rentacolor sent the staff four Rentacolor advertisements, which have been identified as CX 15B–E. (Stip. 17)

18. The advertisement identified as CX 15E was published in *The Washington Post TV* magazine for the week of May 11, 1980. CX 16 is a copy of the advertisement as published. (Stip. 18) **[12]**

19. The advertisement identified as CX 17 was published in *The Washington Post TV* magazine for the week of September 6, 1981. (Stip. 19) The advertisement identified as CX 20 was published in *The Hartford Courant TV Week* (CX 20A) and *The Detroit News TV* magazine (CX 20B) for the week of September 13, 1981, and in *TV Guide* magazine for the Washington, D. C. metropolitan area for the week of September 12–18, 1981 (CX 20). (Stip. 25) The advertisement identified as CX 21 was published in *The Washington Post TV* magazine (CX 21A) and *The Boston Globe TV* magazine (CX 21B) for the week of September 13, 1981. CX 20 and CX 21 differ only with respect to the positioning of the ad copy. (Stip. 26) The advertisement identified as CX 24 was published in *TV Guide* magazine for the Washington, D.C. metropolitan area for the week of October 10–16, 1981. (Stip. 27)

20. The advertisement identified as CX 25 was published in *The Philadelphia Inquirer TV Week* for the week of March 14, 1982. CX 24 and CX 25 differ from CX 20 and CX 21, respectively, only in that the former refer specifically to "a 19" TV." (Stip. 28)

21. On October 1, 1981, Rentacolor instructed its advertising agency to modify all ads which failed to include the **[13]** monthly lease charge so as to include the monthly lease charge. If the president of the advertising agency were to testify, he would state that he immediately instructed his staff to make the change requested by Rentacolor in such ads, that the change was immediately made for advertising to

appear in all publications except *The Philadelphia Inquirer TV Week,* and that the failure to make the change in *The Philadelphia Inquirer TV Week* was the result of inadvertence. Complaint counsel neither admit nor deny the truth of said president's prospective testimony. (Stip. 32)

E. *Respondents' Lease Contract Terms*

22. The consumer lease contracts identified as CX 6 thru CX 10 were executed during January and February, 1980, using respondents' standard lease contract form, CX 5. This contract form was used from September 1979 to August 1980. (Stip. 5, 9, 22; CX 4) The contracts obligate the lessee to lease the property for a minimum period of twelve months. (*See e.g.,* Item 10 of CX 6B) Item 10 of these contracts provides as follows:

> Renter may terminate this Agreement after twelve months of signing this Agreement by giving not less than four weeks' written notice of such intention to terminate; provided, however, that the date of termination must coincide with a date on which a payment hereunder is due and the [14] Apparatus must be returned to Owner on or before such termination date in a condition satisfactory to Owner; provided further, that any and all rental payments accruing on or before such termination date shall be paid by Renter prior thereto. The termination of this Agreement shall not affect any right Owner may have hereunder arising out of any act or omission of Renter occurring prior to the termination hereof.

There is no other provision for termination of the lease. Respondents have stipulated that these contracts are consumer lease contracts, as defined in Section 213.2(a)(6) of Regulation M, the implementing regulation of the Consumer Leasing Act [Section 226.2(mm) of Regulation Z]. (Stip. 9; Stip. 1, n. 1) Respondents have also stipulated that a majority of the lease agreements transacted during the period September 1979 to August 1980 and from August 1981 to the present were for twelve months duration. (Stip. 5)

23. On the contracts in use from September 1979 to August 1980, the place for the lessee's signature is located at the bottom of the front page of the contracts. (*See, e.g.,* Item 6 of CX 6A) There is no place for the lessee's signature on the back page of the contracts.

24. On the front page of the contracts, respondents give a brief description of the leased property (Item 3, CX 6A), disclose the number and amount of the monthly payments scheduled [15] under the lease (Item 5, CX 6A), and disclose the initial payment due under the lease. (Item 4, CX 6A) The initial payment is due prior to or at the time the contract is executed. (Item 2, CX 6B) An installation charge is imposed as part of the initial payment. (Item 4, CX 6A; Stip. 7)

25. On the back page of the contracts, respondents describe their

responsibility for servicing and maintaining the leased property. (Item 4, CX 6B) This information is not disclosed on the front page of the contracts. (CX 6A)

26. On the back page of the contracts, respondents disclose a 10% penalty on rent installments that have not been paid within 10 days of the due date (Item 2, CX 6B), and a $25 charge as liquidated damages in the event the lessee defaults. (Item 12, CX 6B) This information is not disclosed on the front page of the contracts. (CX 6A)

27. On the back page of the contracts, respondents state the conditions under which they may terminate the lease prior to the end of the scheduled lease term. (Items 11 and 12, CX 6B) This information is not disclosed on the front page of the contracts. (CX 6A)

28. Respondents fail to state in the contracts, the total amount of the monthly payments scheduled under the lease (CXs 6–**[16]**10), and whether or not the lessee has the option to purchase the leased property. (CXs 6–10)

29. Rentacolor began using the disclosure statement identified as CX 23 in July 1980. (Stip. 24) There is no contention that this disclosure statement does not comply with the Consumer Leasing Act.

F. *Respondents' Advertising Disclosures*

30. The Federal Trade Commission staff first contacted Rentacolor concerning its leasing practices by letter of December 11, 1979 (Stip. 8), which was subsequent to publication of the advertisement in *The Washington Post TV* magazine for the week of December 2, 1979, identified as CX 11. (Stip. 12) CX 11 is captioned "TEN REASONS WHY TV RENTAL IS A BETTER BUY THAN BUYING." One such reason given is that there is "No Downpayment." The ad also states, "Rental starts as low as $14.95 a month on a yearly basis." CX 11 does not state the number of payments scheduled under the advertised transaction, nor does it state the total amount of such payments. Further, there is no disclosure of whether the lessee has the option to purchase the advertised property, nor is there a statement identifying the advertised transaction as being a lease. Finally, there is nothing indicating that a charge is imposed for installing the advertised property. **[17]**

31. In response to the staff's letter of December 11, 1979, respondents submitted, by letter of February 13, 1980, copies of two Rentacolor advertisements, identified as CX 2 and CX 3. (Stip. 9) CX 2 depicts a Rentacolor employee delivering a television to a house where four men are standing inside the door, apparently preparing to watch a football game on the Rentacolor television. The advertisement states in part:

Sit back and enjoy all the action without a care. . . . There's no down payment . . . All repairs are free and done in home . . .

Monthly rental rates start at $14.95 a month,* and that's all you pay.

*On a yearly basis.

The ad does not identify the advertised transaction as a lease. The ad does not state the number of payments scheduled under the transaction, nor does it state the total amount of such payments. There is no disclosure of whether the lessee has the option to purchase the advertised property, and there is no disclosure of an installation charge.

32. CX 3 depicts a frowning man standing over a television and a caption, "If It Breaks Down, Call Us." The advertisement states: **[18]**

If the set ever needs repair we'll come to your home immediately. . . .

Prices start at $14.95 a month.

The advertisement does not state the total amount of any payment due upon consummation of the advertised transaction or that no such payment is required. The ad does not identify the advertised transaction as a lease. The ad does not state the number of payments scheduled under the transaction nor does it state the total amount of such payments. There is no disclosure of whether the lessee has the option to purchase the advertised property.

33. CX 2 shows an address for Rentacolor at 5 Hillcrest Avenue, Wethersfield, Ct., and lists two telephone numbers. CX 3 shows an address for Rentacolor at 116 Main Street, New Britian, Ct., and lists two telephone numbers. The record does not establish whether these two advertisements were ever disseminated.

34. The advertisement identified as CX 12 was published in *The Washington Post TV* magazine for the week of March 2, 1980. (Stip. 13) CX 12 depicts a Rentacolor employee polishing the screen of a television in a room where a man is sitting back in a chair smiling, with a pipe in his mouth and slippers on his feet. The caption reads, "Rent a New Color TV. And You'll Be Set For Life." The ad also states: **[19]**

Famous name color sets starting as low as $14.95 a month.* That one monthly payment covers everything. There's no downpayment or financing with Rentacolor.

*Based on 12 months.

The advertisement does not identify the advertised transaction as a lease; it does not state the number of payments scheduled under the transaction nor does it state the total amount of the monthly pay-

ments scheduled under the lease; it does not disclose whether the lessee has the option to purchase the advertised property; and there is no disclosure of an installation charge.

35. The advertisement identified as CX 13 was published in *The Washington Post TV* magazine for the week of March 30, 1980. (Stip. 14) The caption reads:

Rent a New Color TV. And Give Up Down Payments For Good.

The ad also states:

Call Rentacolor and spring for a new set for as little as $14.95 a month.*

*Based on yearly rental.

The ad does not identify the advertised transaction as a lease; it does not state the number of payments scheduled under the transaction, nor the total amount of such payments. There is no disclosure of whether the lessee has the option to purchase the advertised property, and there is no disclosure of an installation charge. [20]

36. The advertisements identified as CX 14B–E were sent to the FTC staff by respondents' counsel by letter dated March 27, 1980. (Stip. 15) The ads each state "No Down Payment" is required, and each discloses a monthly payment of $16.95. The ads do not identify the advertised transaction as a lease, and there is no disclosure of an installation charge. The record does not establish whether these advertisements were ever disseminated. CX 14B has a telephone number which indicates a location in the Washington, D.C. area. (*See* CX 13, which has the same telephone number, and was disseminated in *The Washington Post TV* magazine - Stip. 14.) CX 14E has a telephone number listed for New Jersey residents to dial.

37. On April 11, 1980, the staff met with Rentacolor's counsel and Brian N. Cawley to discuss respondents' lease contract forms and their advertisements and their plans for revising them. (Stip. 16) The advertisements identified as CX 2, CX 3, and CXs 11–14 were available to the staff and respondents at the time of the meeting.

38. The advertisements identified as CX 15B–E were sent to the staff by respondents' counsel with letter dated April 23, 1980. (Stip. 17) These advertisements make no disclosure of an [21] installation charge. The record does not establish whether the advertisements identified as CX 15B, CX 15C, and CX 15D were ever disseminated. CX 15E is identical to CX 16, which was disseminated in *The Washington Post TV* magazine for the week of May 11, 1980. (Stip. 18)

39. By letter of September 9, 1981, the FTC staff contacted respond-

ents again. (Stip. 20) This followed publication of the advertisement, identified as CX 17, in *The Washington Post TV* magazine for the week of September 6, 1981. (Stip. 19) CX 17 is captioned, "How to afford a $750 Video Cassette Recorder." The ad discloses a monthly payment of $39.95. The ad does not disclose the total amount of any payment due at consummation of the transaction or that no such payment is required.

40. The advertisements identified as CX 19 through CX 23 were mailed by respondents' counsel to the staff by letter dated September 14, 1981, in response to the staff's letter of September 9, 1981. (Stip. 21) The advertisement identified as CX 20A was published in *The Hartford Courant TV Week* for the week of September 13, 1981; CX 20B was published in *The Detroit News TV* magazine for the week of September 13, 1981; CX 20 was published in *TV Guide* magazine for the Washington, D.C. metropolitan area for the week of September 12–18, 1981. (Stip. 25) The advertisement identified as CX 21A was published [22] in *The Washington Post TV* magazine for the week of September 13, 1981; and the advertisement identified as CX 21B was published in *The Boston Globe TV* magazine for the week of September 13, 1981. (Stip. 26) CX 20 and CX 21 differ only with respect to the positioning of the ad copy. CX 20, CX 20A, CX 20B, CX 21, CX 21A, and CX 21B are captioned, "Why buy a new TV when renting is just 66¢ a day?" The ads all state:

> With Rentacolor, there's no down payment, . . . you simply make monthly no interest payments.

The ads do not disclose the amount of the monthly payments scheduled under the lease. Also, the ads do not disclose that a charge is imposed at the beginning of the lease for installation, or that no such charge is due.

41. The advertisement identified as CX 24 was published in *TV Guide* magazine for the Washington, D.C. metropolitan area for the week of October 10–16, 1981. (Stip. 27) The advertisement identified as CX 25 was published in *The Philadelphia Inquirer TV Week* for the week of March 14, 1982. (Stip. 28). CX 24 and CX 25 are captioned, "Why buy a 19" TV when renting is just 66¢ a day?" The ads state:

> With Rentacolor, there's no down payment . . . you simply make monthly no interest payments.

CX 24 and CX 25 differ from CX 20 and CX 21 only in that the caption in CX 24 and CX 25 refers specifically to a 19" TV. [23] (Stip. 28) Thus, CX 20, CX 20A, CX 20B, CX 21, CX 21A, CX 21B, CX 24 and CX 25 do not disclose the amount of the monthly payments scheduled under

the lease, and the ads do not disclose that a charge is imposed at the beginning of the lease for installation, or that no such charge is due.

42. Respondents' advertisements were designed to aid, promote, and assist leases for personal, family, or household purposes. (*See, e.g.,* the illustrations in CX 12 and CX 16) CX 11 mentions "Service In Home," and "As long as you have Rentacolor in your home. . . ." (*See also,* CX 12, CX 13 ["service . . . in home"], CX 16 ["Immediate In-Home Service"], CX 17 [". . . start watching your favorite movies at home"], CX 20, CX 20A, CX 20B, CX 21, CX 21A, CX 21B, CX 24, CX 25 ["instant in-home service"])

II. Conclusions

A. *Summary of the Proceedings*

Respondents Rentacolor, Inc., Rentacolor U.S.A., Inc., and Brian N. Cawley, individually and as an officer of the respondent corporations, are engaged in the business of leasing television sets and other video equipment to the public. These **[24]** lease transactions constitute consumer leases of personal property for personal, family, or household purposes, as "consumer lease" is defined in Section 226.2(mm) of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System, and respondents have so stipulated. (Stip. 4, 5, 9; CXs 6–10; F. 22)

Respondents are charged in the complaint with causing customers to execute consumer lease agreements that:

1. Failed to make all of the required disclosures together, as required by Section 226.15(a) [213.4(a)(2)] of Regulation Z[M], on either:

(a) the contract or other instrument evidencing the lease on the same page and above the place for the lessee's signature; or

(b) a separate statement which identifies the lease transaction;

2. Failed to disclose the total amount of the periodic payments scheduled under the lease, as required by Section 226.15(b)(3) [213.4(g)(3)] of Regulation Z[M]; and

3. Failed to disclose whether or not the lessee has the option to purchase the leased property, as required by Section 226.15(b)(11) [213.4(g)(11)] of Regulation Z[M].

(Complaint ¶ 5)

The complaint further charges that respondents have caused to be published advertisements, as "advertisement" is defined in **[25]** Section 226.2(d) [213.2(a)(2)] of Regulation Z[M], to aid, promote, or assist directly or indirectly their consumer leases. Certain of these adver-

tisements have stated the amount of the periodic payment involved or that no downpayment is required, without also stating each of the following:

1. That the transaction advertised is a lease, as required by Section 226.10(g)(1) [213.5(c)(1)] of Regulation Z[M];
2. The total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments are required, as prescribed by Section 226.10(g)(2) [213.5(c)(2)] of Regulation Z[M];
3. The number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease, as required by Section 226.10(g)(3) [213.5(c)(3)] of Regulation Z[M]; and
4. A statement of whether or not the lessee has the option to purchase the leased property and at what price and time, as required by Section 226.10(g)(4) [213.5(c)(4)] of Regulation Z[M].

(Complaint ¶ 4)

Pursuant to Section 103(s) of the Truth in Lending Act, respondents' alleged failures to comply with Sections 226.10(g) [213.5(c)] and 226.15 [213.4] of Regulation Z[M] are charged as violations of that Act and, pursuant to Section 108 thereof, violations of the Federal Trade Commission Act. **[26]**

The record in this proceeding consists of a stipulation of facts together with documentary exhibits which have been incorporated into the stipulation. The parties waived the right to a formal hearing and to the introduction of any documents not cited in the stipulation, and rely upon the stipulation and the documents incorporated therein, together with their findings of fact and supporting legal briefs. (Stip., Introductory ¶) Respondents have stipulated that Rentacolor, Inc. and Rentacolor U.S.A., Inc. have used the same lease contracts and the same advertisements in the operation and promotion of their business. (Stip. 29, 30) Rentacolor charges an installation fee when the leased property is installed in the customer's home. The fee varies depending on the type of unit leased. (Stip. 7)

The Consumer Leasing Act (Section 183 of the Truth in Lending Act and Section 226.10(g) of Regulation Z, which implements the Truth in Lending Act) provides that any consumer lease advertisement that states the amount or number of any payments, or that any or no downpayment is required, must also disclose certain additional information. The information required to be disclosed is (1) that the advertised transaction is a lease; (2) the total amount of any payment required at consummation of the lease or that no such payment is required; (3) the number, amounts, due dates or periods of scheduled **[27]** payments and the total of such payments; (4) a statement of

whether or not the lessee has the option to purchase the property and at what price and time; and (5) a statement of the amount or method of determining the amount of any end of term liabilities imposed upon the lessee.

The Consumer Leasing Act also requires that written disclosures of costs and terms be made prior to consummation of any lease contract. Section 182 of the Truth in Lending Act and Section 226.15(b) [Section 213.4(g)] of Regulation Z[M] spell out the necessary disclosures, which include such items as a description of the leased property, the total amount of any incidential fees payable by the lessee during the lease term, the number and amount of periodic payments and the total of such payments, and the amounts and methods of determining the amounts of any end of term liabilities. Included also are descriptions and costs of any insurance involved in the lease, identification of express warranties, responsibility for maintenance, and any security interest retained by the lessor. Section 226.15(a) [Section 213.4(2)] of Regulation Z[M] requires that these lease disclosures be made *together* on either the lease contract and *above the place for the lessee's signature,* or on a separate statement that identifies the lease transaction. **[28]**

Subsequent to March 23, 1977, to and including July 1980, respondents, in connection with their consumer leases, have caused their customers to execute consumer lease contracts. Respondents did not provide their customers with any other consumer lease disclosures during this period. (Stip. 22, 24) On the front page of the consumer lease contracts (CXs 5–10), respondents disclose:

(1) a brief description of the leased property, as required by Section 226.15(b)(1) of Regulation Z;

(2) the total amount of the initial payment due at consummation of the lease, as required by Section 226.15(b)(2) of Regulation Z; and

(3) the number and amount of the monthly payments scheduled under the lease, as required by Section 226.15(b)(3) of Regulation Z.

The place for the lessee's signature is located at the bottom of the front page of the contract. (*See, e.g.,* CX 6A)

The information disclosed on the face of the contracts, as aforesaid, is not disclosed on the back of the contracts. On the back of the contracts, respondents disclose:

(1) a description of their responsibility for servicing and maintaining the leased property, as required by Section 226.15(b)(8) of Regulation Z;

(2) the amounts of the charges for delinquency, default, or late

payment, as required by [**29**] Section 226.15(b)(10) of Regulation Z; and

(3) the conditions under which respondents may terminate the lease prior to the end of the scheduled term, as required by Section 226.15(b)(12) of Regulation Z.

The above information disclosed on the back of the contracts is not disclosed on the face of the contracts.

Thus, by the use of the aforementioned lease contracts, respondents have:

(1) failed to make all of the required disclosures together, as required by Section 226.15(a) of Regulation Z, on either:

(a) the contract or other instrument evidencing the lease on the same page and above the place for the lessee's signature; or

(b) a separate statement which identifies the lease transaction;

(2) failed to disclose the total amount of the monthly payments scheduled under the lease, as required by Section 226.15(b)(3) of Regulation Z; and

(3) failed to disclose whether or not the lessee has the option to purchase the leased property, as required by Section 226.15(b)(11) of Regulation Z.

Subsequent to March 23, 1977, respondents have caused advertisements to be published, as "advertisement" is defined in [**30**] Section 226.2(d) [Section 213.5(c)] of Regulation Z[M]. (F. 42) Advertisements were published in Massachusetts (CX 21B), where only Rentacolor, Inc. does business (Stip. 1, 2), in Michigan (CX 20B) and in the Washington, D.C. metropolitan area (CXs 11–13, CXs 16–17, CXs 20–21, CX 21A, and CX 24) where only Rentacolor U.S.A., Inc. does business (Stip. 1, 2), and in Connecticut and Pennsylvania, where both Rentacolor, Inc. and Rentacolor U.S.A., Inc. do business. (Stip. 1, 2; CX 20A, CX 25)

Some of these advertisements stated the amount of the required monthly payment (CXs 11–12, CXs 16–17), and some advertisements stated that no downpayment was required (CXs 11–13, CX 16, CX 20, CX 20A, CX 20B, CX 21, CX 21A, CX 21B, CXs 24–25), thus triggering the disclosure requirements of Section 226.10 of Regulation Z (Section 213.5(c) of Regulation M).

By and through these advertisements, respondents have:

(1) failed to disclose that the advertised transaction is a lease, as required by Section 226.10(g)(1) of Regulation Z (*see* CXs 11–13);

(2) failed to disclose the total amount of the payment due at consum-

mation of the lease or that no such payments were required, as prescribed by Section 226.10(g)(2) of Regulation Z (*see* CX 17);

(3) failed to disclose the amount of the installation charge as part of the [31] payment due at consummation of the lease, as required by Section 226.10(g)(2) of Regulation Z (*see* CXs 11–13, CXs 16–17, CX 20, CX 20A, CX 20B, CX 21A, CX 21B, CXs 24–25);

(4) failed to disclose the number of monthly payments due under the lease, as required by Section 226.10(g)(3) of Regulation Z (*see* CXs 11–13 and CX 17);

(5) failed to disclose the amount of the monthly payments due under the lease, as required by Section 226.10(g)(3) of Regulation Z (*see* CX 20, CX 20A, CX 20B, CX 21A, CX 21B, CXs 24–25);

(6) failed to disclose the total amount of the monthly payments due under the lease, as required by Section 226.10(g)(3) of Regulation Z (*see* CXs 11–13); and

(7) failed to disclose whether or not the lessee has the option to purchase the leased property, as required by Section 226.10(g)(4) of Regulation Z (*see* CXs 11–13).

The Federal Trade Commission staff first contacted respondents on December 11, 1979, following publication of a Rentacolor advertisement in *The Washington Post TV* magazine for the week of December 2, 1979. (Stip. 8, 12; CX 11) Respondents responded to the staff letter with a letter dated February 13, 1980, enclosing some advertisements and lease contracts, together with a written statement about respondents' leasing activities. (Stip. 9) The staff subsequently contacted respondents by letter dated March 6, 1980, requesting additional information, and respondents responded by letter dated March 21, [32] 1980. (Stip. 10, 11) By letter dated March 27, 1980, respondents sent the staff drafts of four new Rentacolor advertisements, CX 14B–E. (Stip. 15) On April 11, 1980, the staff met with respondent Brian N. Cawley and respondents' counsel to discuss respondents' lease contract forms and their advertisements, and their plans for revising them. (Stip. 16) By letter dated April 23, 1981, Rentacolor's counsel sent the staff four more Rentacolor ads for its perusal, CX 15B–E. (Stip. 17)

The staff next contacted respondents by letter of September 9, 1981. This letter was sent to respondents subsequent to publication of an advertisement in *The Washington Post TV* magazine for the week of September 6, 1981, identified as CX 17. (Stip. 19, 20) CX 17 does not disclose the total amount of any payment due at consummation of the transaction, or that no such payment is required. Respondents' counsel responded to the staff's letter with a letter dated September 14 1981, enclosing advertisements identified as CXs 19–23. (Stip. 21)

The staff again met with Rentacolor's counsel and Respondent Brian N. Cawley on December 16, 1981. (Stip. 31) This followed publication of an ad in the *TV Guide* magazine for the Washington, D.C. metropolitan area for the week of October 10–16, 1981 (Stip. 27; CX 24), which did not disclose the amount of [33] the monthly payments scheduled under the lease, and did not disclose that a charge is imposed at the beginning of the lease for installation or that no such charge is due.

The advertisement identified as CX 25 was published in *The Philadelphia Inquirer TV Week* for the week of March 14, 1982. (Stip. 28) This advertisement, identical in substance to CX 24, did not disclose the amount of the monthly payments scheduled under the lease, and did not disclose that a charge is imposed at the beginning of the lease for installation or that no such charge is due.

The Commission's complaint issued on November 1, 1982.

B. *Jurisdiction*

Section 108(c) (15 U.S.C. 1607(c)) of the Truth in Lending Act (15 U.S.C. 1601–1667) provides that except to the extent that enforcement of the Act is specifically committed to some other Government agency, the Federal Trade Commission shall enforce its requirements, and a violation of any requirement imposed under the Act shall be deemed to be a violation of the Federal Trade Commission Act. (15 U.S.C. 41–58) Section 108(c) provides further that all of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the Truth in Lending Act, [34] regardless of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

Section 103(s) (15 U.S.C. 1602(4)) of the Truth in Lending Act[4] provides that any reference to any of the Act's requirements or provisions includes reference to the regulations promulgated under the Act by the Board of Governors of the Federal Reserve System; in this case, Regulation Z.

No statute of limitations attaches to administrative proceedings brought under Section 5 of the Federal Trade Commission Act or by the Commission under the Truth in Lending Act, *Commercial Programming Unlimited, Inc.*, FTC Docket No. 9029 (Jan. 8, 1976) (order denying respondents' motion to dismiss complaint), and neither equitable estoppel nor laches is a defense to an action brought by the government in the public interest. *Horizon Corporation*, 97 F.T.C. 464,

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[4] As a result of the enactment of the Truth in Lending Simplication and Reform Act, which took effect on April 1, 1982, Section 103(s) became Section 103(x), but there was no substantive change in the provision. (*See*, n. 1, *supra*, at 2)

772, 860 (1981); *SKF Industries, Inc.,* 94 F.T.C. 6, 83 n. 8 (1979); *Utah Power & Light Co. v. United States,* 243 U.S. 389, 408–09 (1917); *Times-Picayune Publishing Co. v. United States,* 345 **[35]** U.S. 594, 623–24 (1953); *United States v. Firestone Tire & Rubber Co.,* 374 F.Supp. 431, 433 (N.D. Ohio 1974).

C. *Respondents' Violations of the Consumer Leasing Act*

The Consumer Leasing Act (Pub. L. No. 94–240, 90 Stat. 257, 15 U.S.C. 1667) was enacted on March 23, 1976 as an amendment to the Truth in Lending Act. The Act took effect on March 23, 1977.

Congress had found that there was a growing trend toward leasing durable goods for personal use as an alternative to buying on credit and that these leases had been offered without adequate cost disclosures. It is the purpose of the Act "to assure a meaningful disclosure of the terms of leases of personal property for personal, family, or household purposes so as to enable the lessee to compare more readily the various lease terms available to him, limit balloon payments in consumer leasing, enable comparison of lease terms with credit terms where appropriate, and to assure meaningful and accurate disclosures of lease terms in advertisements." (90 Stat. 257; 15 U.S.C. 1601(b))

Leases often provide for monthly payments less than would be available if similar property were purchased on credit. Additionally, many leases require no downpayment or similar **[36]** charge. This raises the possibility that lease advertisements might mislead consumers by selectively emphasizing one or more of these features. S. Rep. No. 590, 94th Cong., 2d Sess. 5 (1976) To prevent this from happening, Congress has provided in the Consumer Leasing Act that the required disclosures in consumer leases must be set out "accurately and in a clear and conspicuous manner." (15 U.S.C. 1667(a)) The disclosures in advertisements promoting consumer leases must be stated "clearly and conspicuously." (15 U.S.C. 1667(c)) Regulation M, issued by the Board of Governors of the Federal Reserve System to implement the Act, requires that the consumer lease disclosures be made "clearly, conspicuously, in meaningful sequence . . ." and "together on (i) either the contract or other instrument evidencing the lease on the same page and above the place for the lessee's signature; or (ii) a separate statement which identifies the lease transaction." (Section 213.4(a)(1)(2)) Regulation M requires that the disclosures in consumer lease advertisements be made "clearly and conspicuously." (Section 213.5(c))

In *Thomka v. A.Z. Chevrolet, Inc.,* 619 F.2d 246 (3rd Cir. 1980), the court analyzed the consumer lease disclosure requirements of the Truth in Lending Act as applied to a car leasing agreement. The court

found that numerous provisions in the agreement did not comply with the requirement of Section 226.6(a) of Regulation Z that the mandated disclosures be made [37] in a "clear and conspicuous manner." *Id.,* at 249. In reversing the decision of the district court, the Court of Appeals observed that the lower court had "ignored" the requirement of Section 226.15(a)(1) of Regulation Z that all of the required disclosures be made on the same page and above the place for the lessee's signature. *Ibid.* The court said that the district court was mistaken in assuming that the "clear and conspicuous" requirement was satisfied where the information had to be gleaned by reference to more than one paragraph of the agreement, and more than one page. The court specifically cited the failure of the agreement to state "clearly or explicitly" whether or not the lessee had the option to purchase the leased property, as required by Section 226.15(b)(11) of Regulation Z, and said, in effect, that when the consumer must look at more than one paragraph of the agreement, scattered over two pages, to understand an item of information required to be disclosed by the Regulation, he is not informed in a "clear and conspicuous manner." *Ibid.*

The Rentacolor lease contract (CX 5), in use until August 1980, like the lease agreement in *Thomka,* failed to make all of the required disclosures on the same page, above the place for the lessee's signature, as required by Section 226.15(a)(1) of Regulation Z. Whether or not the lessee has the option to purchase the leased property cannot be gleaned from the [38] disclosures found in Rentacolor's contracts prior to August 1980, or from its advertisements. (CXs 5–10, CXs 11–13) The Rentacolor lease contracts and certain Rentacolor advertisements (CXs 11–13) failed to disclose the total amount of the monthly payments scheduled under the lease, as required by Section 226.15(b)(3) and Section 226.10(g)(3), respectively, of Regulation Z. Rentacolor advertisements also failed to disclose that an installation charge was due at the commencement of the lease contract, and the amount of such charge. (CXs 11–13, CX 17, CX 21, CX 21A, CX 21B, CXs 24–25)

Furthermore, certain Rentacolor advertisements (CX 20, CX 20A, CX 20B, CX 21A, CX 21B, CXs 24–25) failed to disclose the amount of the monthly payments scheduled under the lease, as required by Section 226.10(g)(3) of Regulation Z. Even though the monthly payment might have been determinable in some cases by dividing the yearly amount by the number of months in a year, the lease contracts and advertisements still fail the "clear and conspicuous" test because the law requires the disclosure of an amount, *i.e.,* a dollar figure. As the court said in *Thomka,* "The 'total amount paid' means [the consumer] does not have to do the addition, but that the total amount is noted in one lump figure." 619 F.2d at 249.

The record is clear, respondents' advertisements and lease contracts, alone and in combination, failed to provide in a [39] clear and conspicuous manner, much of the information mandated by the Consumer Leasing Act and Regulation Z. The requirements of the Act and the implementing Regulation Z are unequivocal about the disclosures to be made and how they are to be made. These mandated requirements, although technical in nature, cannot be ignored, and there is no reasonable discretion to deviate from them.

The applicable standard for determining compliance with the Truth in Lending Act is "strict compliance" with the Act's requirements. In *Smith v. Chapman,* 614 F.2d 968 (5th Cir. 1980), a case involving the credit provisions of the Truth in Lending Act, the court, in responding to the defendant's claim of "substantial compliance," explained: "Only adherence to a strict compliance standard will promote the standardization of terms which will permit consumers readily to make meaningful comparisons of available credit alternatives." *Id.* at 971. *See also, Beauty-Style Modernizers, Inc.,* 83 F.T.C. 1761, 1779 (1974) ("There is no such thing as 'substantial' compliance with the Truth in Lending Act and the regulation that implements it. Either you are or you aren't."), and *Certified Building Products, Inc.,* 83 F.T.C. 1004, 1041 (1973).

Further, a "strict compliance" standard means there is no need to find deception or consumer injury in order to establish [40] liability for a violation, *Chapman,* 614 F.2d at 971, and it is not a defense in such a proceeding to show that the public has not been injured by the challenged practice. *American Aluminum Corp.,* 84 F.T.C. 21, 51 (1974). Thus, in *Dzadovsky v. Lyons Ford Sales, Inc.,* 593 F.2d 538 (3rd Cir. 1979), the Third Circuit rejected the argument that the Act is not violated if there is no allegation that consumers have been deceived or suffered financial loss because of inaccurate Truth in Lending disclosures. The court said, "It is clear, however, that such injury need not be alleged. One of the legislative purposes of the Act is to enable consumers to compare various available credit terms. Any proven violation of the disclosure requirements of the Act is presumed to injure a borrower by frustrating that purpose." *Id.* at 539 (footnote omitted).

Following the example of the credit provisions of the Truth in Lending Act, Congress enacted the Consumer Leasing Act expressly "to protect consumers against inadequate and misleading leasing information." 90 Stat. 257. In considering the appropriate legislation to achieve this purpose, it was stated that important aspects of lease contracts were often not explained clearly; consequently, consumers were unable to compare the advantages or disadvantages of one lease arrangement with another or to compare a lease arrangement to a

retail [41] credit sale. *Hearings on H.R. 4657 Before the Subcomm. on Consumer Affairs of the House Comm. on Banking, Currency and Housing,* 94th Cong., 1st Sess. 1 (1975) (statement of Chairman Frank Annunzio). Congress, in passing the Consumer Leasing Act, predetermined that certain lease terms and information were so invaluable to consumers' ability to make an informed decision regarding leasing that their omission was inherently injurious. Thus, arguments addressed to the "technical" or *"de minimus"* nature of the violation are to no avail in this proceeding. As the court stated in *Gennuso v. Commercial Bank & Trust Co.,* 566 F.2d 437, 443: "Any misgivings about the technical nature of the requirements under the [Truth in Lending] Act or Regulation [Z] should be addressed to Congress and the Federal Reserve Board, not to this Court."

D. *Respondents' Defense Arguments*

Respondents contend that the Consumer Leasing Act (*i.e.,* the consumer leasing provisions of the Truth in Lending Act) did not apply to their business prior to August 1980 because respondents "did not offer a lease for a period of time exceeding four months." (RPF p. 16; RB, pp. 3–5) Respondents base their argument on the fact that the lease contract form [42] used prior to August 1980 (CX 5) does not expressly state that the lessee *must* keep the equipment for twelve months, or for any specific period of time.[5]

Respondents point out that the face of the contracts in evidence (*see, e.g.,* CX 6A), identifies no minimum required rental period. The reverse side of the contracts, however, does contain a provision (Number 10) which provides: "Renter may terminate this agreement after twelve months of signing this Agreement by giving not less than four weeks' written notice of such intention to terminate. . . ."

Respondents contend that this provision should be read to establish only a procedure for cancelling after twelve months (*i.e.,* with four weeks notice); it does not say one must keep the television for twelve months. By inference, a customer had the right under this contract to return the equipment at any time and pay amounts owed for the period the equipment was held. Respondents state that this was the interpretation that Rentacolor placed on its contracts; that it accepted televisions returned to it; and that it instituted no legal action for rental payments for any minimum period. (*See* CX 4) Consequently, according to respondents, the language of the [43] contracts, the practice of respondents, and the use of the contracts by respondents all

[5] Section 226.2(mm) of Regulation Z defines a "consumer lease" as "a *contract* in the form of a bailment or lease for the use of personal p-operty by a natural person primarily for personal, family or household purposes, *for a period of time exceeding four months. . . .*" (emphasis added)

clearly prove that there was no requirement that a customer keep the equipment rented for any specific period. (RPF, pp. 16–18; RB, pp. 3–5)

Respondents' contention with respect to how the lease contracts were interpreted internally in their business operations is self-serving, and the argument which they make in respect to the lease contracts is contrary to the stipulations entered into in this proceeding. Respondents have stipulated that the lease contracts which they transacted in January and February 1980 (*see* CXs 6–10) are "consumer lease contracts" (Stip. 9), as defined by the implementing regulation of the Consumer Leasing Act. (Stip. n. 1, p. 1; *see* F. 22) Respondents have also stipulated that the majority of the lease contracts they have transacted from September 1979 to August 1980 and from August 1981 to the present were for a "minimum *contractual* period of twelve months." (Stip. 5; emphasis added)

A stipulation made in court or preparatory to trial, by a party or his attorney, conceding for the purposes of the trial the truth of some alleged fact, has the effect of a confessory pleading, in that the fact is thereafter to be taken for granted; so that the one party need offer no evidence to prove it, and the other is not allowed to disprove it. **[44]** IX Wigmore on *Evidence,* Section 2588 at 586 (3d. ed. 1940). The vital feature of a judicial admission is universally conceded to be its *conclusiveness* upon the party making it, *i.e.,* the prohibition of any further dispute of the fact by such party, and of any use of evidence to disprove or contradict it. *Id.,* Section 2590 at 587; *see also, Hill v. FTC,* 124 F.2d 104, 106 (5th Cir. 1941).

In the absence of fraud, inadvertence, or mistake, parties to stipulations and agreements entered into in the course of judicial proceedings are estopped to take positions inconsistent therewith. 31 C.J.S. Estoppel Section 120; *Markow v. Alcock,* 356 F.2d 194, 198 (5th Cir. 1966). *See also, Turner v. Woodard,* 259 Fed. 737 (1st Cir. 1919); *Schwartz v. Pattiz,* 41 F.R.D. 456 (E.D. Mo. 1967), *aff'd, Pattiz v. Schwartz,* 386 F.2d 300 (8th Cir. 1968).

While there is strong authority supporting the conclusiveness of a judicial stipulation voluntarily entered into, and despite the fact that respondents' argument is inconsistent with the actual language of the stipulations and what is the obvious intent of the stipulations, respondents' argument will be considered since it is grounded on respondents' interpretation of the language, Item 10, of lease contracts which are part of the stipulations. **[45]**

Even if respondents had not stipulated that the majority of their contracts were for a minimum contractual period of twelve months, the weight of the evidence would nevertheless compel the conclusion that respondents' leases obligated the lessee to lease the equipment for a minimum twelve-month period. The lease contract used prior to

August 1980 expressly provided the lessee a right to terminate the agreement twelve months after signing it. (Item 10 of CX 5B) There is no provision in the lease that states or even suggests that the lessee has a right to terminate the lease at will or at any time prior to the expiration of twelve months. In fact, under the contracts lessees could be liable for $25 as liquidated damages in the event of a breach of the contract. (*See e.g.,* Item 12, CX 6)

Under the doctrine of *expresso unius est exclusio alterius* ("the expression of one thing is the exclusion of another"), when certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred. *Little v. Town of Conway,* 171 S.C. 27, 31, 171 S.E. 447, 448 (1933). Applying the doctrine to the instant case, the compelling inference is that by stating the manner in which the lessee could terminate the lease at the end of the twelve-month period, and no other, respondents intended that the lessee would not be entitled to terminate at any time prior to the end of the twelve-month term. If the lessee had a right to **[46]** terminate the contract in less than twelve months, it would make no sense for respondents *not* to specify the method by which this could be done when they have specified the method for termination at the end of twelve months. Therefore, the clear import of the contract language is that respondents' lease contracts were terminable only upon the completion of the twelve-month term; thus, they were for a fixed and binding duration and may not be considered terminable at will. *See, Besco, Inc. v. Alpha Portland Cement Co.,* 619 F.2d 447, 448 (5th Cir. 1980) (contract not terminable at will because document established duration by defining those events which would permit termination); *Consolidated Laboratories, Inc. v. Shandon Scientific Co.,* 413 F.2d 208, 210 (7th Cir. 1969) (contract terminable upon occurrence of an event is not terminable at will).

Assuming *arguendo* that respondents did take back leased equipment prior to the end of the twelve-month period and did not institute suit to collect unpaid rental installments, this in no way expands upon the language of the lease contract for the benefit of all customers, or enlightens those customers who may have desired to but did not attempt to return the equipment prior to the expiration of the twelve-month period because of the contract language.

Finally, respondents cite three cases to support their argument that the Consumer Leasing Act does not apply "where **[47]** there is no requirement that a party rent the personal property for more than four months . . .", *Lemay v. Stroman's, Inc.,* 510 F.Supp. 921 (E.D. Ark. 1981); *Dodson v. Remco Enterprises, Inc.,* 504 F.Supp. 540 (E.D. Va. 1980); *Smith v. ABC Rental Systems of New Orleans,* 491 F.Supp. 127 (E.D. La. 1978). (RPF p. 16) These cases, which concern the applicabili-

ty of the Truth in Lending Act to "rent-to-buy" agreements, involve contracts that *expressly* provided for a rental period of less than four months,[6] and therefore are clearly distinguishable from the facts in this proceeding.

E. *The Remedy*

Having determined that respondents have violated the Consumer Leasing Act and Regulation Z [M], it is necessary to consider an appropriate remedy. It is well established that "the Commission has wide discretion in its choice of a remedy **[48]** deemed adequate to cope with unlawful practices" and that, so long as the remedy selected has a "reasonable relation to the unlawful practices found to exist," the court will not interfere. *Jacob Seigel Co. v. FTC,* 327 U.S. 608, 611 (1946); *see also, FTC v. Cement Institute,* 333 U.S. 683, 726 (1948); *FTC v. Colgate Palmolive Co.,* 380 U.S. 374, 392 (1965); *L.G. Balfour Co. v. FTC,* 442 F.2d 1 (7th Cir. 1971). Having established a violation, the Commission must "be allowed effectively to close all roads to the prohibited goal, so that the order may not be by-passed with impunity." *FTC v. Rubberoid Co.,* 343 U.S. 470, 473 (1952); *see also, FTC v. National Lead Co.,* 352 U.S. 419, 431 (1957).

Respondents contend that no order should issue because respondents have worked hard to bring their practices in line with the staff's view, and that respondents have been in substantial compliance with the law since July 1980, except for technical defects. (RPF, pp. 18–19; RB, pp. 6–10) Respondents argue that the previous acts are unlikely to be repeated in the future, making entry of a cease and desist order unnecessary. (RPF, p. 20) Respondents further state that the unlawful practices have been voluntarily discontinued or abandoned, that a substantial period of time has elapsed since the acts were last committed, that circumstances indicate respondents were acting in good faith in discontinuing the unlawful practices **[49]** with no intention of resuming the practices, and that there is no direct proof of a likelihood of resumption of such practices. (RPF, pp. 20–21) According to respondents, the picture that develops from this record is that of companies intent on compliance with the law. (RPF, p. 22) Finally, if an order is deemed necessary, only a declaratory order should enter, with the Commission taking this opportunity to indicate its intention to enforce the law against companies that do not voluntarily comply

[6] In *Lemay v. Stroman's, Inc.,* 510 F.Supp. 921 (E.D. Ark. 1981), the agreement contained a clearly stated provision binding the customer to a rental of only one week. In *Dodson v. Remco Enterprises, Inc.,* 504 F.Supp. 540 (E.D. Va. 1980), the contract stated that "the initial rental period shall be one month." *Id.* at 541. "Renter may terminate this agreement at the end of any rental period by return of the property to owner." *Id.* at 542. The contract in *Smith v. ABC Rental Systems of New Orleans, Inc.,* 491 F.Supp. 127 (E.D. La. 1978) stated explicitly that it was a week-to-week rental agreement only, which was "terminable by either party at any time." *Id.* at 128.

with the law and which do not show an intention of complying with the law in the future. (RPF, p. 23)

Respondents also contend that no order should be entered against respondent Brian N. Cawley, individually. (RPF, pp. 24-26; RB, pp. 10-13) According to respondents, the Board of Directors of Rentacolor formulates and directs policy which respondent Cawley merely implements. (RPF, p. 26) Any order entered against the corporate respondents would automatically bind the offcers responsible for the conduct of corporate affairs. Respondents contend the record establishes no basis for an order against respondent Cawley, individually, and unless the record affirmatively shows some reason for issuing an order against individuals in their individual capacity, no such order should be entered.

The record in this proceeding is not as supportive of respondents' arguments as they would have it. First, [**50**] respondents' violations of the Consumer Leasing Act cannot be passed off as mere technicalities. Congress was concerned that consumers were being misled as to the true costs of leasing by lessors' failure to disclose important information about lease terms and costs. The Consumer Leasing Act was adopted "to provide consumers with meaningful information about the component and aggregate costs of consumer leases, so that they can make better informed choices between leases and between leases and credit sales." S. Rep. No. 590, 94th Cong., 2d Sess. 2 (1976).

The disclosure violations committed by respondents go to the heart of the purpose of the Consumer Leasing Act; *e.g.*, respondents' failure to disclose in their advertisements the amount of the installation charge, as required by Section 226.10(g)(2) of Regulation Z, deprived consumers of valuable information in determining the initial payment necessary to enter into such an agreement and whether it was to their advantage to do so. The failure to disclose in advertisements the number of payments scheduled under the transaction and the total amount of such payments, as required by Regulation Z, might mislead consumers as to the advantage or disadvantage of leasing. Similarly, respondents' failure to provide all of the required disclosures on the same page above the place for the [**51**] lessee's signature, as required by Section 226.15(a) of Regulation Z, may have confused consumers or led them to overlook important information concerning their rights under the contract (such as when they had the right to terminate the lease).

These violations cannot be lightly dismissed as "technical." The law recognizes no distinction between technical and substantive violations of the Act and Regulation Z. *Certified Building Products, Inc.*, 83 F.T.C. 1004, 1041 (1973). In fact, such violations have been considered to present "a flagrant failure to provide in a clear and conspicu-

ous manner much of the information mandated by the Act and Regulation Z." *Thomka v. A.Z. Chevrolet, Inc.*, 619 F.2d 246, 250 (3rd Cir. 1980).

Second, respondents' assertion that discontinuance of the challenged practices was voluntary and unlikely to be resumed is not convincing. Respondents had ample opportunity to acquaint themselves with the Consumers Leasing Act prior to any Commission intervention. The law had been enacted (March 23, 1976) more than three years before the alleged violations were first noted. It was in effect (March 23, 1977) for over two years prior to December 1979, as was Regulation Z, implementing the Act. The Board of Governors of the Federal Reserve System [52] routinely issued staff opinion letters and other documents explaining its requirements, as did the Federal Trade Commission.

The staff first contacted respondents by letter dated December 11, 1979. Respondents replied two months later, by letter dated February 13, 1979. The staff contacted respondents again by letter dated March 6, 1980, and respondents responded by letter dated March 21, 1980. On April 11, 1980, the staff met with respondents' counsel and respondent Cawley. Thereafter, respondents sent the staff a letter dated April 23, 1980.

Respondents did not conform lease contract disclosures with the requirements of the Consumer Leasing Act until August 1980, over seven months after the initial contact by the staff.

During the period December 1979 after the staff had contacted respondents, until the meeting with the staff on April 11, 1980, advertisements were disseminated which did not conform to the requirements of the Act. (CXs 12–13; *see* F. 34, 35) After the meeting with the staff on April 11, 1980, advertisements were disseminated during the week of May 11, 1980, that failed to make all required disclosures. (CX 15E, CX 16; *see* F. 38) During the week of September 6, 1981, CX 17, a non-complying advertisement was disseminated. (F. 39) The [53] staff then contacted respondents by letter dated September 9, 1981. (Stip. 20) Respondents responded to staff's letter with a letter dated September 14, 1981. (Stip. 21) Nevertheless, during September and October 1981, non-complying advertisements were disseminated. (F. 40, 41)

The staff again met with respondents' counsel and respondent Brian N. Cawley, on December 16, 1981. Thereafter, during the week of March 14, 1982, a non-complying advertisement was disseminated in *The Philadelphia Inquirer TV Week.* (F. 41)

Respondents explain this latter advertisement (CX 25) as an "inadvertence." (RPF, p. 22, n. 10)[7] In October 1981, respondents' advertis-

[7] Assuming *arguendo* that the March 14, 1982 non-complying advertisement was an inadvertence, respondents (footnote cont'd)

ing agency was instructed to modify all advertisements which failed to include the monthly lease charge to include the monthly lease charge. The president of the advertising agency would testify that he immediately instructed his staff to make the changes in the advertisements, that changes were made in all advertisements except the advertisement that appeared in *The Philadelphia Inquirer TV Week*, and that the failure to make that change was the result of inadvertence. (Stip. 32) **[54]**

Respondents apparently would shift responsibility for complying with the law to their advertising agency, and explain their agent's failure to comply with instructions as an "inadvertence." This is impermissible. It was respondents' responsibility to assure that their advertisements were in compliance with the Consumer Leasing Act, and to the extent their agent may have committed an inadvertence, respondents are liable for the acts of their agent.

Thus, the record does not support a picture of a company that voluntarily discontinued the challenged practices, or a company that was intent on complying with the law. Rather, the picture presented is one of much foot-dragging by respondents before and after contact by the staff, a marked degree of inattentiveness or indifference with respect to the legal requirements applicable to what is apparently respondents' principal business - leasing. In any event, it is obvious that whatever the steps taken by respondents to effect compliance with the law, they were both dilatory and inadequate.

The Commission should not be required to continue to monitor respondents' leasing practices so as to advise them everytime they violate the law. A cease and desist order will place the burden of complying with the law where it should be - on respondents.

It is settled this discontinuance or abandonment of a practice does not prevent the issuance of a cease and desist order directed to such practice. *Giant Food, Inc.*, 61 F.T.C. **[55]** 326 (1962). This principle is particularly applicable to situations where the discontinuance was not entirely voluntary but occurred only after the Commission had begun an investigation into such practices, where respondent continues in the same line of business, and where there is no guarantee that the practices may not be resumed. *Coro, Inc.*, 63 F.T.C. 1164, 1201 (1963), *modified and aff'd, Coro, Inc. v. FTC*, 338 F.2d 149 (1st Cir. 1964), *cert. denied*, 380 U.S. 954 (1965); *Fedders Corp.*, 85 F.T.C. 38, 72–73 (1975), *aff'd*, 529 F.2d 1938 (1976), *cert. denied*, 429 U.S. 818 (1976); *Marlene's Inc. v. FTC*, 216 F.2d 556, 559 (7th Cir. 1954); *Galter v. FTC*, 186 F.2d 810, 812–13 (7th Cir. 1951); *Eugene Dietzen Co. v. FTC*, 142 F.2d 321, 330 (7th Cir. 1944), *cert. denied*, 323 U.S. 730 (1944);

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were still violating the Consumer Leasing Act in October 1981, over twenty-two months after respondents were first contacted by the staff. (*See* CX 24; F. 41)

P.F. Collier & Sons Corp. v. FTC, 427 F.2d 261, 275 (6th Cir. 1970); *Perma-Maid v. FTC*, 121 F.2d 282 (6th Cir. 1941).

In *Zale Corp.*, 78 F.T.C. 1195, 1240 (1971), the Commission stated its position:

> It is well established that the mere fact that the offending practices have been discontinued prior to the issuance of a complaint does not provide, by itself, the requisite assurance that an order is unnecessary and not in the public interest. As the courts have noted, it is the timing and circumstances of the claimed abandonment which is of importance to the issue of the necessity for an order. Where, as here, the abandonment took place only after the Commission's hand was on the respondent's shoulder, the courts are clear that abandonment of the practices under such circumstances will not support a conclusion that the practices will not be resumed. (Footnote omitted) **[56]**

Accord, J. M. Sanders Jewelry Co., 85 F.T.C. 250, 265 (1975).

F. *Individual Liability of Brian N. Cawley*

The complaint names Brian N. Cawley as respondent in his individual capacity and as officer of the respondent corporations. Cawley is a "person" subject to the requirements of the Truth in Lending Act and Regulation Z because the Act and Regulation apply to any person, as "person" is defined by Section 226.2(bb) of Regulation Z, that offers consumer leases to residents of any state, as "state" is defined in Section 226.2(hh) of Regulation Z. This includes foreign companies or individuals operating in the United States whether or not the lessor is chartered in the United States or a foreign country. Federal Reserve Board Official Staff Commentary on Regulation M, Comment 213.1–1[8]

It is now axiomatic that to prevent erosion of its orders, the Commission has the authority to name individually the officers, directors, and the stockholders of corporations when **[57]** they have participated in or controlled the acts or practices giving rise to the complaint. *FTC v. Standard Education Society*, 302 U.S. 112 (1937); *Rayex Corp. v. FTC*, 317 F.2d 290 (2d Cir. 1963); *Standard Distributors v. FTC*, 211 F.2d 7 (2d Cir. 1954); *Virginia Mortgage Exchange*, 87 F.T.C. 182, 203 (1976). Cawley, in his capacities as President and Chief Executive Officer and a Director of the corporate respondents (Stip. 3), directly participated in the practices in question. He was present on two occasions at discussions with the FTC staff concerning Rentacolor's lease contracts and advertisements. (Stip. 16, 31) Even if he did not have complete authority over respondents' leasing operations, he certainly was made aware of the requirements of the Consumer Leasing Act,

[8] While the Official Staff Commentary is meant to interpret the leasing regulations promulgated as Regulation M, effective April 1, 1981, the Commentary makes it clear that there has been no change in regulatory coverage or applicability since the consumer leasing provisions were issued as part of Regulation Z. *See* "References" to Comment 213.1.

and he was in a position to take whatever steps were necessary to assure that respondents' activities complied with the law. Absent some showing to the contrary, it must be concluded that Cawley was the person primarily responsible for the inadequate manner in which respondents responded to the staff's concerns, and thus for respondents' failure to bring their leasing activities into compliance with the law in a prompt and effective manner.

Cawley has directed the operations of the corporate respondents for the entire period covering the record violations. (Stip. 3) Previously he had 15 years of experience in the television rental business in England before he assumed **[58]** his position as president and a member of the Board of Directors of respondent corporations in the United States. (CX 4A) Acting as agent for Rentacolor International, Rentacolor, Inc.'s foreign parent (CX 4A), Cawley could easily dissolve the respondent corporations, form a new corporation under a different name, or go in business for himself. The Commission, with such a possibility in mind, stated in *Coran Bros. Corp.*, 72 F.T.C. 1, 25 (1967):

> The public interest requires that the Commission take such precautionary measures as may be necessary to close off any wide "loophole" through which the effectiveness of its orders may be circumvented. Such a "loophole" is obvious in a case . . . where the owning and controlling party of an organization may, if he later desires, defeat the purposes of the Commission's action by simply surrendering his corporate charter and forming a new corporation, or continuing the business under a partnership agreement or as an individual proprietorship with complete disregard for the Commission's action against the predecessor organization.

Failure to name Cawley individually would result in such a loophole; hence, the public interest requires that the Commission take the precautionary measure of including him in its order. Proof that he intends to evade the order is unnecessary. *Id.*, at 24. "[T]he opportunity to evade is the loophole that must be closed." *Carpets "R" Us, Inc.*, 87 F.T.C. 303, 320 (1976). *See also, Virginia Mortgage Exchange, supra.* **[59]**

Conclusions of Law

1. The Federal Trade Commission has jurisdiction over respondents and the subject matter of this proceeding.

2. The complaint herein states a cause of action and this proceeding s in the public interest.

3. Subsequent to March 23, 1977, respondents have transacted "consumer leases" as defined in Section 226.2(mm) of Regulation Z, that ailed to comply with Section 226.15 of Regulation Z.

4. Subsequent to March 23, 1977, respondents have caused "adver-

tisements" as defined in Section 226.2(d) of Regulation Z to be published that failed to comply with Section 226.10(g) of Regulation Z.

5. Respondents, by violating Sections 226.15 and 226.10(g) of Regulation Z, have violated the Truth in Lending Act by virtue of Section 103(s) of the Act, and, pursuant to Section 108(c) thereof, respondents have thereby violated the Federal Trade Commission Act.

6. The Order entered hereinafter against corporate respondents Rentacolor, Inc. and Rentacolor U.S.A., Inc., and **[60]** Brian N. Cawley, individually, is appropriate and necessary to remedy the violations of law which have been found to exist.

Order

I

It is ordered, That respondent Rentacolor, Inc., a corporation, Rentacolor U.S.A., Inc., a corporation, their successors and assigns, and their officers, and Brian N. Cawley, individually and as an officer of said corporations, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with any consumer lease or arrangement for a consumer lease, or any advertisement to aid, promote, or assist directly or indirectly any consumer lease, as "consumer lease" and "advertisement" are defined in Regulation M (12 C.F.R. 213), do forthwith cease and desist from:

A. Representing in any advertisement, directly or by implication, the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease, unless all of the **[61]** following items are disclosed as applicable, as required by Section 213.5(c) of Regulation M:

(1) that the transaction advertised is a lease;

(2) the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments are required;

(3) the number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease;

(4) a statement of whether or not the lessee has the option to purchase the leased property and at what price and time; and

(5) a statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and a **[62]** statement that the lessee shall be liable for the difference, if any, between the estimated value of the leased property

and its realized value at the end of the lease term, if the lessee has such liability.

B. Failing to make all of the required disclosures prior to consummation of the transaction, as required by Section 213.4(a)(2) of Regulation M, together on either:

(1) the contract or other instrument evidencing the lease on the same page and above the place for the lessee's signature; or

(2) a separate statement which identifies the lease transaction.

C. Failing to disclose the total of the periodic payments scheduled under the lease, as required by Section 213.4(g)(3) of Regulation M.

D. Failing to disclose whether or not the lessee has the option to purchase the leased property, as required by Section 213.4(g)(11) of Regulation M. **[63]**

E. Failing, in any consumer lease transaction or advertisement, to make all the disclosures required by Sections 213.4 and 213.5 of Regulation M in the manner prescribed by Sections 213.4 and 213.5 of Regulation M.

II

It is further ordered, That the corporate respondents distribute a copy of this Order to all operating divisions of said corporations and to present or future personnel, agents, or representatives of said corporations having sales, advertising, or policy responsibilities with respect to the subject matter of this Order, and that respondents secure from each such person a signed statement acknowledging receipt thereof.

III

It is further ordered, That the corporate respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor **[64]** corporation, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of this Order.

IV

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or

employment. In addition, for a period of ten (10) years from the date of service of this Order, said respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged, as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

V

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this Order, **[65]** file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Opinion of the Commission

By Miller, *Chairman:*

This matter is before the Commission on appeal from an initial decision[1] of Administrative Law Judge Ernest G. Barnes. Judge Barnes sustained the allegations of the Commission's complaint against all three respondents named therein: Rentacolor, Inc., Rentacolor U.S.A., Inc., and Brian N. Cawley, as an officer of said corporations and individually (respondents are hereinafter referred to collectively as "Rentacolor" or "the company"). The evidence before the ALJ was limited to facts stipulated by agreement of the parties and to documents submitted with the stipulation agreement. Judge Barnes found that Rentacolor had violated the Consumer Leasing Act (15 U.S.C. 1667 *et seq.*) ("the CLA"),[2] Regulation Z (12 C.F.R. 226) and [2] Regulation M (12 C.F.R. 213) promulgated thereunder,[3] and the Federal Trade Commission Act (15 U.S.C. 45). In particular, he found

[1] The following abbreviations are used herein:

I.D.F. - Initial Decision Finding No.
I.D. - Initial Decision Page No.
RB - Respondent's Appeal Brief Page No.
RRB - Respondent's Reply Brief Page No.
Stip. - Stipulation No.
CX - Exhibit No.

[2] The CLA (Pub. L. 94-240, 15 U.S.C. 1667 *et seq.*) was signed into law as an amendment of the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) on March 23, 1976 and became effective on March 23, 1977.

[3] Prior to April 1, 1981, the CLA was implemented by consumer leasing provisions contained in the Federal Reserve Board of Governors' Regulation Z (12 C.F.R. 226), which implements the Truth in Lending Act. The consumer leasing provisions were removed from Regulation Z by the Board and redesignated as Regulation M (12 C.F.R. 213), effective April 1, 1981, without any substantive changes being made to those provisions. The Commission's complaint allegations covered periods before and after April 1, 1981 and therefore cited to both Regulation Z and Regulation M.

that the company had failed to make several disclosures required by the CLA and its implementing regulations and to make certain disclosures in the manner required in connection with Rentacolor's advertising and leasing of color television sets and other video equipment to the public. The order issued by Judge Barnes would require Rentacolor to disclose certain information in accord with the specific requirements of the CLA and Regulation M and would impose the order's requirements upon respondent Cawley as an officer of the respondent corporations and individually.

The record on appeal is limited to that which was before the ALJ and to written briefs filed on appeal. Oral argument was waived. Rentacolor makes essentially the same contentions here as it did below: (1) that complaint counsel failed to show by a preponderance of the evidence that Rentacolor was subject to the requirements of the CLA during the period of its alleged violations; (2) that the company's prompt and good-faith compliance with the Act since July 1980 requires that no order be **[3]** issued; and (3) that, in any event, no order should be issued against Cawley in his individual capacity.

We find Rentacolor's first two contentions to be without merit, as did Judge Barnes, but we believe the evidence insufficient to support an order against Cawley individually. Accordingly, we adopt Judge Barnes's findings, conclusions, and initial decision except as qualified or changed by this opinion and we adopt his order except as to Cawley in his individual capacity.

I. *Alleged Failure of Complaint Counsel To Show that Rentacolor Was Subject To the CLA*

The CLA applies only to consumer leases that bind lessees to keep the leased equipment "for a period of time exceeding four months. . . ." 15 U.S.C. 1667(1). Rentacolor asserts that prior to August 1980, it leased to the public on a month-to-month basis only. However, the facts set forth in Stipulation 5 are contrary to Rentacolor's contention.

Stipulation 5, in relevant part, states:

> From September 1979 to August 1980 and from August 1981 to the present Rentacolor had available and *transacted lease agreements* from three to *twelve months in duration. The majority of these lease agreements were for a minimum contractual period of twelve months* (Emphasis added). [4]

Rentacolor does not challenge the ALJ's reliance upon these facts. We find them sufficient to reject the company's argument and adopt the ALJ's findings on this point.[4]

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[4] Stipulation 9 states, in part, that certain Rentacolor contracts executed during January and February 1980 are "consumer lease contracts." Footnote 1 of the stipulation agreement defines the term "consumer lease" by refer-

(footnote cont'd)

Notwithstanding the facts set out in Stipulation 5, Rentacolor argues that until August 1980, the company leased to the public on a month-to-month basis because its lease form in use until then (CX–5; Stip. 22) contained no provision specifying a minimum term for the lease[5] but did include a provision that [5] expressly required the customer to pay a monthly rental fee (RB 16–17). From this Rentacolor argues that its pre-August 1980 leasing agreements must be construed as imposing only a month-to-month term in accordance with court decisions holding that the term of a lease of real property for an unspecified period may be implied from the intervals at which rent is paid (RB 17–18).

Rentacolor's reliance upon decisions involving real property leases is misplaced. We are dealing here with leases, not of real property, but of personal property, to which the law governing contracts applies. It is hornbook contract law that the intent of the contract must be deduced from the instrument as a whole and from the surrounding circumstances. *Williston On Contracts,* Third Edition, Section 610B (1961). We think it clear from the terms of the Rentacolor lease and from the surrounding circumstances that the company intended that the majority of its leases were to run, not month-to-month, but year-to-year.[6]

The company's advertisements frequently promoted monthly rental rates on a "yearly" or "12-month" basis (CX 2, 11, 12, 13), thus inviting the public to enter into leasing agreements of a year's duration. Rentacolor's leases calculated a customer's payments in terms of the "First Year" through the "Fifth and subsequent yrs" (CX 6a - CX 10a), which clearly suggests, [6] contrary to Rentacolor's contention, that the company intended its leases to run far longer than one

ence to Section 213.2(a)(6) of Regulation M which, in turn, defines "consumer lease" to mean "a contract . . . for a period of time exceeding four months. . . ." Rentacolor contends that Footnote 1 was not intended by the parties to be used to interpret Stipulation 9 but was merely meant to describe the company's practices that are involved in the Commission's proceeding. Thus, according to Rentacolor, the term "consumer lease contracts" used in Stipulation 9 is not synonomous with Regulation M's definition of "consumer lease" (RB 19, n.3; RRB 2–4). Rentacolor's contention as to the significance of Footnote 1 creates enough doubt as to prompt us not to rely upon Stipulation 9 as a second ground for rejecting the company's argument on the basis of the stipulation agreement. However, as noted above, we find the unchallenged facts of Stipulation 5 to be an adequate basis for rejecting the company's argument.

[5] By contrast, the lease form that Rentacolor began using in August 1980 (CX–22 (a–b); Stip. 23) does contain a provision specifying a minimum term "for a period of 2M months" (CX–22(a), Item 2), with the number of months apparently inserted at the time the lease is executed. Moreover, Rentacolor's Disclosure Statement (CX–23), which the company began using for the first time in July 1980 (Stip. 24), provides that the customer "may not terminate the lease prior to the end of the lease term (CX–23, Item 12(a))." From August 1980 thru July 1981 Rentacolor transacted lease agreements solely for three months in duration (Stip. 5); its leasing activities were therefore not subject to the CLA during that period, and the evidence of record does not concern that period. However, in August 1981 Rentacolor again began transacting lease agreements up to twelve months in duration (Stip. 5), and the company does not contest that it became subject to the Act at that time.

[6] Even if we were dealing here with leases of real property, we would reach the same conclusion. Such leases are regarded as contracts to which contract law generally applies. *Thompson On Real Property,* Section 1046 (1980 Replacement); 51C C.J.S. 232. The interval between payments of rent does not control the duration of the term of the lease where the provisions of the lease or other circumstances indicate otherwise. *Thompson On Real Property, supra,* Section 1088; 51C C.J.S. 232.

month. Precisely how much longer is answered by Item 10 on the back of the Rentacolor contracts (CX 6b–CX 10b):

> Renter may terminate this agreement after twelve months of signing this agreement by giving not less than four weeks written notice of such intention to terminate. . . .

Rentacolor's explanations of the significance of this provision as "simply confirm[ing] that the lease *may* extend more than one year on a month to month basis (RB 19)", or as "simply to protect both the customer and Rentacolor in the event the lease should extend so long (*Id.*)," or as "simply reinforc[ing] respondents' position that no particular method of termination is required when the equipment is held for less than a year (RRB 5)" are strained and unconvincing. We agree with Judge Barnes that since the Rentacolor lease contained no provision expressly allowing the customer to terminate the agreement in less than twelve months, and, in fact, expressly conferred a right of termination only after twelve months, the compelling inference is that the contract was intended to bind the customer to a twelve-month lease (I.D. 44–46).

II. *Alleged Voluntary Discontinuance*

Rentacolor argues that no order should be issued because: 1) the company acted promptly and in good faith to correct alleged violations of the law (RB 24); 2) it "moved decisively" in this direction "in April 1980" (RB 23); 3) it commenced advertising in line with the requirements of the CLA "as early as [7] May 1980" (*Id.*); 4) it was "in full compliance" with staff's view of the Act "by July 1980" (RB 3, 20–21, and 24); 5) any alleged violations which occurred after July 1980 were merely "technical" or "inadvertent" and were "quickly remedied" (RB 4, 12, 20 and 23); 6) all alleged violations "have long since been voluntarily discontinued" (RRB 9); and 7) its corrective actions justify an inference that any previous practices, if found unlawful, are not likely to be repeated in the future (RB 24).

The record does not support any of these claims. We note, first of all, that Rentacolor does not even claim to have complied with the CLA before the Commission began its investigation in December 1979. Indeed, the company argues that its leasing activities were not subject to the Act at that time, and the evidence confirms the company's noncompliance: the only Rentacolor lease form in use at that time (CX–5; Stip. 22) did not comply with the law (I.D.F. 22–28; I.D. 26–29, 37–41); and the company's advertisements published around the time of the commencement of our investigation also failed to comply with the law (I.D.F. 30–32; I.D. 24–25, 29–31, 38).

Even the onset of the Commission's investigation in December 1979

failed to stir Rentacolor into compliance with the CLA with any deliberate speed. The company's "decisive move" of April 1980 entailed a meeting with Commission staff, but nothing more (Stipulation 16). That meeting was preceded and followed by several months' exchange of written correspondence (I.D.F. 5–6, 17) during which Rentacolor made available copies of its leases and advertisements, which reflected the company's continuing [8] failure to comply with the Act both before and after the April meeting (I.D.F. 5–7, 15–18, 31–38; I.D. 29–32, 35–41). Rentacolor does not cite, nor can we discover, any evidence to support its claim that it commenced advertising in line with the requirements of the Act "as early as May 1980." Indeed, the evidence is to the contrary (I.D.F. 18–20, 38–42; I.D. 30–33, 38). Nor was the company "in full compliance" with the CLA "by July 1980," as it claims. What corrective action it finally took at that time—nearly seven months after our investigation began—only partially satisfied the Act's requirements: the company adopted for the first time a disclosure statement for use with its contracts (I.D.F. 13).[7] However, this corrective action did not bring Rentacolor's advertising practices into line with the Act.

Despite the Commission's previous efforts to secure Rentacolor's compliance with the CLA, the company's advertisements in September and October 1981 and one in March 1982, while satisfying more of the Act's requirements than previous ads, nevertheless failed to fully comply with the Act. (Compare I.D.F. 15–18, 30–38 with I.D.F. 19 and 39–41). We reject the company's contention that these deviations were "technical" and ought not be regarded as vitiating its "substantial efforts" to [9] comply (RB 20). As we said in *Beauty Style Modernizers, Inc.*, 83 F.T.C. 1761, 1779 (1974):

> There is no such thing as "substantial" compliance with the Truth in Lending Act and the regulation that implements it. Either you are or you aren't. The purpose of that statute is to permit the ordinary consumer, without regard to the degree of his commercial sophistication, to receive the kind of credit information that will allow him effectively to compare the credit terms being offered in the marketplace and thus to "shop" for the most favorable terms available. (15 U.S.C. 1601.) Only uniform terms, universally used, would allow the kind of credit comparison mandated by the Act.

See also, James v. *City Home Service, Inc.*, 712 F.2d 193, 194 (5th Cir. 1983); *Smith* v. *Chapman*, 614 F.2d 968, 971 (5th Cir. 1980); *Certified Building Products, Inc.*, 83 F.T.C. 1004, 1041 (1973).

At least one violation, moreover, continued throughout the Commission's investigation, and on the basis of the record we cannot be

[7] Regulation Z (now Regulation M) provided an option for the making of disclosures with respect to a lease agreement covered by the CLA: such disclosures could be made on one page of the agreement above the place for the consumer's signature or on a separate disclosure statement. 12 C.F.R. 226.15(a) (now 12 C.F.R. 213.4(a)(2)). Rentacolor chose the second option.

certain that it has been discontinued even now, *i.e.,* the failure to disclose the total amount the consumer must pay at the consummation of the lease (I.D.F. 30–36, 38–41; I.D. 29–33, 38–41). Even if it were clear that Rentacolor had discontinued all challenged practices after the Commission had begun its investigation, that would not preclude entry of an order. *Fedders Corp.* v. *FTC,* 529 F.2d 1398 (2d Cir.) *cert. denied,* 429 U.S. 818 (1976); *P.F. Collier & Sons Corp.* v. *FTC,* 427 F.2d 261 (6th Cir. 1970); *Coro, Inc.* v. *FTC,* 338 F.2d 149 (1st Cir. 1964), *cert. denied,* 380 U.S. 954 (1965); *Galter* v. *FTC,* 186 F.2d 810 (7th Cir.) *cert. denied,* 342 U.S. 818 (1951). Rentacolor's history of begrudging and inadequate compliance with the CLA only **[10]** after Commission intervention does not inspire confidence that without an order to cease and desist the company would pursue a future course of full compliance. From the record before us, a cognizable danger of recurrent violation is apparent. *United States* v. *W.T. Grant Co.,* 345 U.S. 629 (1953).

III. *Individual Liability of Respondent Cawley*

We find the evidence insufficient to support an order against respondent Cawley in his individual capacity. While we agree with Judge Barnes that such an order is justifiable where an executive officer of the respondent company is found to have personally participated in or controlled the challenged acts or practices,[8] we find the evidence insufficient to support such findings. Cawley's participation in two meetings with the Commission staff concerning Rentacolor's leasing agreements and advertising practices does not demonstrate his personal participation in or control of those practices. Similarly, the fact that "[Rentacolor's] Board of Directors formulates policy for Rentacolor and, as president, Cawley is responsible for implementing that policy (Stip. 3)" does not demonstrate the **[11]** requisite degree of control necessary to establish personal responsibility.

The lack of evidence on two other factors adds weight to our decision: there is no evidence that Cawley has sufficient control over the respondent corporations to defeat an order against them by dissolving the corporations and forming a new one; nor is there any evidence suggesting that Cawley has the financial resources or backing necessary for him to enter the leasing business on his own. In light of all the evidence, we find personal liability inappropriate in this case.

After the record in this case closed, respondent Cawley filed an affidavit stating that he had resigned as President and Director of

[8] As Judge Barnes found, it is "axiomatic that the Commission has the authority to name individually the officers, directors, and the stockholders of corporations when they have participated in or controlled the acts or practices giving rise to the complaint. *FTC* v. *Standard Education Society,* 302 U.S. 112 (1937); *Rayex Corp.* v. *FTC,* 317 F.2d 290 (2nd Cir. 1963); *Standard Distributors* v. *FTC,* 211 F.2d 7 (2nd Cir. 1954); *Virginia Mortgage Exchange,* 87 F.T.C. 182, 203 (1976)." (I.D. 56–67).

both Rentacolor companies; he had no present affiliation with, and no present intent of becoming affiliated with, either of the Rentacolor companies; and he had no present intent of reentering the T.V. rental business. In the accompanying order, the Commission granted Cawley's motion to file this affidavit. However, our decision regarding his personal liability is not based on the information included in this affidavit. Indeed, we believe it is entirely appropriate for the Commission to enter an order against an individual respondent even though that individual no longer has any affiliation with the corporate respondent. *Crown Tuft, Inc.*, 93 F.T.C. 1085, 1086 (1977) (order denying motion to modify or vacate consent order); *Raymond Lee Organization*, 92 F.T.C. 489, 637–639 (1978).

Final Order

This matter has been heard by the Commission upon respondents' appeal from the initial decision and upon briefs in support thereof and in opposition thereto. Oral argument was waived. The Commission, for the reasons stated in the accompanying Opinion, has granted the appeal in part and denied it in part.

After the record closed, respondent Brian N. Cawley submitted a motion requesting leave to file an affidavit. *It is ordered*, That respondent Cawley's affidavit be placed on the record.

It is further ordered, That the initial decision of the administrative law judge be adopted as the Findings of Fact and Conclusions of Law of the Commission except where inconsistent with the attached Opinion and that the complaint as to respondent Brian N. Cawley be dismissed.

It is further ordered, That the following Order to Cease and Desist be entered: [2]

Order

I

It is ordered, That respondents Rentacolor, Inc., a corporation, and Rentacolor U.S.A., Inc., a corporation, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with any consumer lease or arrangement for a consumer lease, or any advertisement to aid, promote, or assist directly or indirectly any consumer lease, as "consumer lease" and "advertisement" are defined in Regulation M (12 C.F.R. 213), do forthwith cease and desist from:

A. Representing in any advertisement, directly or by implication, the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at consummation of the lease, unless all of the following items are disclosed as applicable, as required by Section 213.5(c) of Regulation M: [3]

(1) that the transaction advertised is a lease;

(2) the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease, or that no such payments are required;

(3) the number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease;

(4) a statement of whether or not the lessee has the option to purchase the leased property and at what price and time; and

(5) a statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and a statement that the lessee shall be liable for the difference, if any, between the estimated value of the leased property and its realized value at the end of the lease term, if the lessee has such liability.

B. Failing to make all of the required disclosures prior to consummation of the transaction, as [4] required by Section 213.4(a)(2) of Regulation M, together on either:

(1) the contract or other instrument evidencing the lease on the same page and above the place for the lessee's signature; or

(2) a separate statement which identifies the lease transaction.

C. Failing to disclose the total of the periodic payments scheduled under the lease, as required by Section 213.4(g)(3) of Regulation M.

D. Failing to disclose whether or not the lessee has the option to purchase the leased property, as required by Section 213.4(g)(11) of Regulation M.

E. Failing, in any consumer lease transaction or advertisement, to make all the disclosures required by Sections 213.4 and 213.5 of Regulation M in the manner prescribed by Sections 213.4 and 213.5 of Regulation M. [5]

II

It is further ordered, That the respondents distribute a copy of this Order to all operating divisions of said corporations and to present or future personnel, agents, or representatives of said corporations having sales, advertising, or policy responsibilities with respect to the subject matter of this Order, and that respondents secure from each such person a signed statement acknowledging receipt thereof.

III

It is further ordered, That the respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of this Order.

IV

It is further ordered, That the respondents shall, within sixty (60) days after service upon them of this Order, file with **[6]** the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

IN THE MATTER OF

G.R.I. CORPORATION

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 8828. Consent Order, Feb. 11, 1972—Modifying Order, April 20, 1984

This order reopens the proceeding and modifies a consent order entered on Feb. 11, 1972 (80 F.T.C. 155), which required a direct mail marketing firm, among other things, to cease disseminating advertisements and promotional materials which falsely guarantee or misrepresent the quality or price of any drug, food or beauty preparation. The order further required respondent to clearly and conspicuously disclose, in close proximity to any offer used to enroll consumers in a plan in which other items would be shipped regularly at additional charges, the full details and conditions of that plan, and to repeat them each time the offer was mentioned in the ad. Under the modifying order, the company must clearly and conspicuously disclose near any "free" or special offers that acceptance of the offer places further obligations on the consumer. Except where a coupon or similar form of acceptance is included, respondent need only disclose details of such obligations once elsewhere in the ad.

ORDER REOPENING THE PROCEEDING AND MODIFYING CEASE AND DESIST ORDER

On December 23, 1983, G.R.I. Corporation, [hereinafter G.R.I. or respondent] respondent in the above-captioned matter, filed a petition pursuant to Rule 2.51 of the Commission's Rules of Practice to reopen the proceeding and modify the order entered therein.

The order, which was entered in 1972, covers the offering for sale, sale, or distribution of "Bio-Rich Beauty Cream," "Over Fifty Capsulets," and "Beauty Kits," or any food, drug, or cosmetic.

The order, among other things, prohibits the respondent from falsely guaranteeing its products, misrepresenting the quality of its products in any way, misrepresenting various quality aspects of its products, misrepresenting various aspects of its prices, or attempting to collect for merchandise which has been refused or returned. Paragraph 1(a) of the order prohibits respondent from representing that "[a]ny product is offered free or under any other terms where the offer is used as a means of enrolling those who accept the offer in a plan whereby additional supplies of the product are shipped at an additional charge unless all of the conditions of the plan are disclosed clearly and conspicuously and within close proximity to the 'free' or other offer."

G.R.I. now seeks to modify the order, by adding a provision to

paragraph 1(a) of the order which would permit it to have the option of clearly and conspicuously disclosing obligations attendant upon acceptance of the free or nominally priced offer and then clearly and conspicuously disclosing the complete terms of the offer elsewhere. Thus, the alternative language would not require that respondent disclose all the conditions "within close proximity to the free or other offer" as is now mandated.

The Commission has concluded that the petition is in the public interest and should be granted. The proposed modification should be sufficient to ensure that consumers are aware of their obligations in accepting the free or other offer. Not only is respondent required by the modified order to disclose clearly and conspicuously and within close proximity to the offer that there are other conditions that a consumer assumes upon accepting the offer, but the respondent must clearly and conspicuously set forth elsewhere in the advertisement the complete details, conditions, and obligations. Thus, assuming that the proper language is used, a consumer can be expected to be aware of the obligations attendant upon acceptance of the offer. Moreover, as noted by G.R.I. in its petition, the proposed modification is identical to that granted on March 17, 1983, by the Commission in *Golden Tabs Pharmaceutical Co., Inc.*, Docket 8792. [101 F.T.C. 410]

Respondent has attached several advertisements to its petition, including those which purport to contain disclosures that would satisfy the proposed modified order. Respondent is advised that, in granting the petition, the Commission does not agree that the attached advertisements, or the disclosures contained therein, would constitute satisfactory compliance with the modified order.

It is therefore ordered, That the proceeding is hereby reopened and the Decision and Order issued February 11, 1972, in Docket No. 8828 is hereby modified to read as follows:

ORDER

It is ordered, That respondent G.R.I. Corporation, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of "Bio-Rich Beauty Cream," "Over Fifty Capsulets," and "Beauty Kits," or any food, drug or cosmetic, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing the dissemination of, by means of the United States mail or by means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents directly or by implication that:

(a) Any product is offered "free" or under any other terms where the offer is used as a means of enrolling those who accept the offer in a plan whereby additional supplies of the product are shipped at an additional charge unless all of the conditions of the plan are disclosed clearly and conspicuously and within close proximity to, the "free" or other offer;

or, alternatively,

any product is offered free or under any other terms when the offer is used as a means of enrolling those who accept the offer in a plan whereby additional supplies of the product are shipped at an additional charge unless (1) respondent discloses clearly, conspicuously, and within close proximity to the free or other offer that there is a further obligation upon the consumer upon acceptance of the offer, and (2) respondent also discloses clearly and conspicuously elsewhere in the advertisement the complete details, conditions, and obligations attendant upon acceptance of the offer, provided further that, if the advertisement includes a coupon, signature space, or other designated means by which the consumer is intended to accept the offer, respondent discloses clearly and conspicuously on or in close proximity to the coupon or other space provided for acceptance of the offer the complete details, conditions and obligations attendant upon acceptance of the offer, but such complete disclosure need not appear more than once in the advertisement, including the coupon.

(b) Persons who respond to advertisements incur no obligation when responding to such advertisements: *Provided, however,* this prohibition shall not apply to a representation that persons receiving merchandise are under no obligation to keep or to continue receiving such merchandise.

(c) Respondent's products are guaranteed in any manner unless the nature and extent of the guarantee, the identity of the guarantor and the manner in which said guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith; and unless the respondent fully, satisfactorily and promptly performs all of its obligations and requirements under the terms of the guarantee.

(d) The freshness or potency of any vitamin-mineral or cosmetic preparation is guaranteed.

(e) Any offer is limited in time or in any other manner unless any represented limitation or restriction is actually imposed and adhered to.

(f) Women of any special age require special care or attention for their skin or skin problems.

(g) Bio-Rich Beauty Cream or the ingredients thereof is new or is a recent discovery.

(h) Any price for respondent's products is a special or reduced price, unless such price constitutes a significant reduction from an established selling price at which such products have been sold in substantial quantities by respondent in the recent regular course of its business, and unless respondent has maintained business records that substantiate an established selling price at which such products have been sold in substantial quantities in the recent regular course of its business; or misrepresenting in any manner the savings available to purchasers. In the sale of the products of others, including assortments and/or kits containing the products of others, a representation of comparable value shall not violate the provisions of this paragraph when such comparable value is based on respondent's good faith reliance upon a manufacturer's assurance of value based on (1) substantial recent sales of an item at a given price, or (2) in the case of items that are packaged in a size not otherwise sold to the public, based on a prorata adjustment from the prices obtained for those sizes of the items that have been sold recently and in substantial quantities. Written evidence of said manufacturer's assurance of value shall be maintained by respondent.

(i) That regulations and scientific controls relating to respondent's products have been strictly observed, or in any manner representing that respondent's products conform to any stricter regulations or controls than those required for any other similar products.

(j) That the use of respondent's vitamin-mineral "capsulets" will be of benefit in the prevention of the symptoms of tiredness, nervousness, restlessness, listlessness, worry, irritability, tension, depression, lack of pep or energy, loss of vigor or vitality, or lack of alertness, unless such advertisement expressly limits the effectiveness of the preparation to those persons whose symptoms are due to a deficiency of Vitamin B–1 (Thiamin), Vitamin B–2 (Riboflavin), Vitamin C (Ascorbic Acid), or Niacinamide, and further, unless such advertising clearly and conspicuously reveals the facts that in the great majority of persons, or of any age, sex, or other group or class thereof, who experience such symptoms, these symptoms are caused by conditions other than those which may respond to the use of respondent's vitamin-mineral preparation, and that in such persons the preparation will not be of benefit.

(k) That the ingredients in respondent's vitamin-mineral preparation other than Vitamin B–1 (Thiamin), Vitamin B–2 (Riboflavin), Vitamin C (Ascorbic Acid), or Niacinamide will be of benefit in the prevention of tiredness, nervousness, restlessness, listlessness, worry,

irritability, tension, depression, lack of pep or energy, loss of vigor or vitality, or lack of alertness.

2. Dissemination, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of respondent's products in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations or misrepresentations prohibited by Paragraph 1 hereof.

It is further ordered, That respondent G.R.I. Corporation, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of "Bio-Rich Beauty Cream," "Over Fifty Capsulets," and "Beauty Kits," or any food, drug or cosmetic product in commerce, as "commerce" is defined by the Federal Trade Commission Act, do forthwith cease and desist from:

1. Shipping or sending any merchandise to any person without the prior expressed request or consent of the person to whom such merchandise is sent, unless such merchandise is a free sample and has attached to it a clear and conspicuous statement informing the recipient that he may treat the merchandise as a gift to him and has the right to retain, use, discard, or dispose of it in any manner he sees fit without any obligation whatsoever to the sender in regard to that merchandise.

2. Mailing any bill or any dunning communication for any merchandise shipped or sent without the prior expressed request or consent of the recipient, to such recipient.

3. Shipping or sending merchandise to any person and attempting, or causing to attempt, the collection of the price thereof when a notification of cancellation for any further shipments of merchandise has been sent by such person: *Provided, however,* that it shall be a defense in any enforcement proceeding instituted under this prohibition for respondent to affirmatively establish that: (1) such merchandise had been shipped less than ten (10) working days after said notification of cancellation had been received by respondent in the regular course of business, and (2) no invoices, except for that one accompanying the shipment of said merchandise, or any notice requesting payment for or return of said merchandise had been sent or caused to be sent by respondent to such person concerning said shipment, except that respondent may send one notice to such person advising that the cancellation has been effected and requesting the return of such merchandise if respondent clearly discloses in said notice that such person is under no obligation to return said merchandise, and respondent promises to pay for the return of said merchan-

dise and further, respondent, in fact, reimburses such person for any expenses incurred in its return.

4. Attempting, or causing to attempt, the collection of the price for merchandise when such merchandise has been refused and returned to respondent: *Provided, however,* that it shall be a defense in any enforcement proceeding instituted under this prohibition for respondent to affirmatively establish that any collection notice sent in regard to said refused and returned merchandise could not reasonably be halted after the return of said merchandise, except that this defense shall be unavailable with respect to any collection notice sent more than twenty (20) days after the date on which such merchandise has been refused, returned, and received by respondent in the regular course of business.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions or departments.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondent shall, within sixty (60) days after service upon it of this modified order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist.

It is further ordered, That the foregoing modification shall become effective upon service of this Order.

IN THE MATTER OF

PHARMTECH RESEARCH, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9168. Complaint, July 27, 1983—Decision, May 1, 1984

This consent order requires a San Francisco, Calif. manufacturer of nutritional supplements, among other things, to cease representing that findings of a 1982 National Academy of Sciences report entitled *Diet, Nutrition and Cancer* support the claim that Daily Greens, a dehydrated vegetable tablet, reduces the incidence of any type of cancer. The order requires the company to substantiate representations concerning benefits to health with reliable and competent scientific evidence, and to maintain accurate records which either support or contradict such claims. Further, respondent is prohibited from misrepresenting the purpose, content or conclusion of any scientific test, research article or scientific opinion.

Appearances

For the Commission: *Andrew B. Sacks* and *Reid B. Horwitz.*

For the respondent: *Jon Henry Kouba, Adams, Kouba & Dickson,* San Francisco, Calif. and *Eugene Lambert, Covington & Burling,* Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virture of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that PharmTech Research, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located in San Francisco, California.

PAR. 2. Respondent is now and for some time in the past has been engaged in the manufacture, offering for sale, and sale of nutritional supplements, including Daily Greens, and other products for personal or household use by members of the general public (hereinafter "consumer products").

PAR. 3. Respondent has caused to be prepared and placed for publication and has caused the dissemination of advertising and promotional material, including, but not limited to, the advertising referred to herein, to promote the sale of Daily Greens.

PAR. 4. Respondent operates in various States of the United States and in the District of Columbia. Respondent's manufacturing, offering for sale, sale, and distribution of nutritional supplements, including Daily Greens mentioned herein constitutes maintenance of a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of its business, respondent has disseminated and caused the dissemination of advertisements for nutritional supplements, including Daily Greens, by various means in or affecting commerce, including *inter alia* national magazines and newspapers distributed by the mail and across state lines, and broadcasts transmitted across state lines, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products.

PAR. 6. Typical statements in said advertisements, and promotional materials, disseminated as previously described, but not necessarily inclusive thereof, are found in advertisements and promotional materials attached hereto as Exhibits A through D. Specifically, the aforesaid advertisements and promotional materials contain the following statements:

(A) Cabbage, Brussels Sprouts, Carrots, Cauliflower, Spinach and Broccoli vs. Cancer.

(B) According to the National Academy of Sciences,* a regular diet of cruciferous (cabbage, brussels sprouts, broccoli, cauliflower) and carotene-rich (carrots and spinach) vegetables is associated with a reduction in the incidence of certain cancers.

Of course you may not really like these vegetables. Or you may not cook them quite right. And even if you have all that worked out, you still have to contend with seasonal availability.

That's why there are Daily Greens. . .

**Diet, Nutrition and Cancer,* National Academy Press, 1983.

(C) The National Academy of Sciences thinks a balanced diet may reduce your risk of cancer. Daily Greens were designed to be a part of that balanced diet. . .

(D) [S]ubstantial evidence exists that regular consumption of cruciferous vegetables is associated with a reduction in the incidence of certain cancers. Thanks to the process of dehydration, Daily Greens allow you to eat cruciferous vegetables regularly, with the convenience of a food supplement.

(E) Help your body defend itself.

(F) According to this recent report from the National Research Council, a combination of cruciferous and carotene-rich vegetables have been found to help our bodies build certain *important* biological defenses.

PAR. 7. Through the use, *inter alia,* of the statements referred to in

Paragraphs Six (A) through Six (F), and other representations contained in advertisements or promotional materials not specifically set forth herein, respondent has represented, and now represents, directly or by implication, that:

(a) The findings of the National Academy of Sciences *Diet, Nutrition and Cancer* Report support the claim that use of Daily Greens, or food supplements of dehydrated vegetables such as Daily Greens, is associated with a reduction in the incidence of certain cancers in humans.

(b) The National Research Council findings support a claim that the use of Daily Greens, or food supplements of dehydrated vegetables such as Daily Greens, may help consumers build important biological defenses.

(c) The use of Daily Greens is associated with a reduction in the incidence of certain cancers in humans.

PAR. 8. The representation referred to in Paragraph Seven (a) is false for the reasons, *inter alia,* that the findings of the National Academy of Sciences' *Diet, Nutrition and Cancer* Report do not support the claim that the use of Daily Greens or food supplements of dehydrated vegetables such as Daily Greens is associated with a reduction in the incidence of certain cancers.

PAR. 9. The representation referred to in Paragraph Seven (b) is false, for the reasons, *inter alia,* that no findings of the National Research Council support such a claim.

PAR. 10. At the time respondent made the representation alleged in Paragraph Seven (c), respondent did not possess and rely upon a reasonable basis for making such representation. Therefore, respondent's making and dissemination of said representations, as alleged, constituted and now constitute unfair and deceptive acts or practices.

PAR. 11. Through the use of the advertisements referred to in Paragraph Seven, and other advertisements not specifically set forth herein, respondent has represented, directly or by implication, that it possessed and relied upon a reasonable basis for the representation set forth in Paragraph Seven (c) at the time of the initial dissemination of the representations and each subsequent dissemination. In truth and in fact, respondent did not possess and rely upon a reasonable basis for making such representations. Therefore, respondent's making and dissemination of said representations, as alleged, constituted and now constitute unfair and deceptive acts or practices.

PAR. 12. The use by respondent of the aforesaid statements, representations, acts, and practices, directly or by implication, and the placement in the hands of others of the means and instrumentalities by and through which others may have used the aforesaid statements,

representations, acts, and practices, have had and now have the capacity and tendency to mislead consumers into the erroneous and mistaken belief that said statements and representations were and are true and complete and to induce such persons to purchase Daily Greens by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts or practices of respondent, herein alleged as deceptive, were and are to the prejudice and injury of the public and constituted and now constitute unfair or deceptive acts or practices in or affecting commerce and false advertisements in violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended.

ATTACHMENT A

Cabbage, Brussels Sprouts, Carrots, Cauliflower, Spinach and Broccoli vs. Cancer.

Your grandmother was right.

Eating vegetables is good for you. According to the National Academy of Sciences, a regular diet of cruciferous (cabbage, brussels sprouts, broccoli, cauliflower) and carotene-rich (carrots and spinach) vegetables is associated with a reduction in the incidence of certain cancers*

Of course you may not really like these vegetables. Or you may not cook them quite right. And even if you have all that worked out, you still have to contend with seasonal availability.

That's why there are Daily Greens™.

Daily Greens are concentrated servings of cruciferous and carotene-rich vegetables. Picked ripe. Carefully washed. And quickly dehydrated without cooking. Then they're fortified with vitamins A, C, E, beta-carotene and selenium.

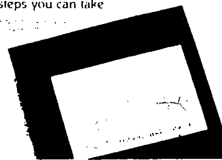
Finally, the ingredients are shaped into tablets and given a protective vegetable coating, freeing Daily Greens from the need for any preservatives.

The National Academy of Sciences thinks a balanced diet may reduce your risk of cancer. Daily Greens were designed to be a part of that balanced diet. Decrease your intake of all fats by one-fourth, drink alcohol only in moderation, try to avoid pickled, smoked or salt-cured foods, eat plenty of fruits, whole grains and vegetables. And of course, don't smoke.

Daily Greens are not a cure for cancer, and there are no guarantees against cancer. But substantial evidence exists that regular consumption of cruciferous vegetables is associated with a reduction in the incidence of certain cancers. Thanks to the process of dehydration, Daily Greens allow you to eat cruciferous vegetables regularly, with the convenience of a food supplement. Ask your doctor.

Even if you already take vitamins, Daily Greens are one more step toward a complete daily health program.

One of the simplest steps you can take.



Help your body defend itself.™

ATTACHMENT B

Cabbage
Brussels Sprouts
Cauliflower
Broccoli
C[illegible]ts
and Spinach

vs. Cancer.

Your grandmother was right. Eating vegetables is good for you. According to the National Academy of Sciences, a regular diet of cruciferous (cabbage, brussels sprouts, broccoli, cauliflower) and carotene-rich (carrots and spinach) vegetables is associated with a reduction in the incidence of certain cancers.*

Of course you may not really like these vegetables. Or you may not cook them quite right. And even if you have all that worked out, you still have to contend with seasonal availability.

That's why there are Daily Greens.™ Daily Greens are concentrated servings of cruciferous and carotene-rich vegetables. Picked ripe. Carefully washed. And quickly dehydrated without cooking. Then they're fortified with vitamins A, C, E, beta-carotene and selenium.

Finally, the ingredients are shaped into tablets and given a protective vegetable coating, freeing Daily Greens from the need for any preservatives.

The National Academy of Sciences thinks a balanced diet may reduce your risk of cancer. Daily Greens were designed to be part of that balanced diet. Decrease your intake of all fats by one fourth, drink alcohol only in moderation, try to avoid pickled, smoked or salt cured foods, eat plenty of fruits, whole grains and vegetables. And of course don't smoke.

Daily Greens are not a cure for cancer, and there are [illegible] guarantees against cancer. But substantial evidence exists that regular consumption of cruciferous vegetables is associated with a reduction in the incidence of certain cancers. Thanks to the process of dehydration, Daily Greens allow you to eat cruciferous vegetables regularly, with the convenience of a food supplement. Ask your doctor.

Even if you [illegible] take vitamins, Daily Greens are one more step toward a complete daily health program. One of the simplest steps you can take.

Daily Greens

Daily Greens

Help your body defend itself.

ATTACHMENT C

PHARMTECH RESEARCH, INC.

VIDEO	AUDIO
Open on white type on black screen, as delivered in audio	1. MALE ANNCR. V/O (Deep Voiced): The following message concerns a revolutionary new concept in diet and nutrition.
Dims to ECU Female annr. in LIMBO setting.	2. ON-CAMERA FEMALE ANNCR.: Did you know that there are certain foods that can actually help your body defend itself?
Cuts to MS Of her as she holds up research.	3. It's true. And, according to a recent 700-page report from the Natic Research Council, a combination of cruciferous vegetables
Diss. and pan display of fresh vegetables.	4. like cabbage, cauliflower, brusse sprouts, broccoli...and carotene-rick vegetables like carrots and spinach
Diss. back to MS of anncr. as she moves to display of fresh vegetables. She gestures to array of vegetables.	5. have been found to help our bodie build certain important biological defenses. Because cooking can strip away nutrients, to get the most benefits from any vegetables, you should eat them raw. But, that can be diffic to do every day.
Cut to ECU of bottle as she holds it up	6. So, I'd like to introduce you to Daily Greens - a new concept in nutrition.

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VIDEO	AUDIO
7. Hold above shot. SUPER: NOT JUST A VITAMIN...A FOOD	7. Daily Greens are NOT just anoth vitamin pill -- they are a food.
8. Diss. and pan along vegetables and petri dishes of powdered vegetables.	8. They're actually natural, fres cruciferous and carotene-rich vege tables, dehydrated and compressed, without cooking, so you get the nutrients, the fiber and the rough that's so good for you.
9. Diss. back to anncr. holding bottle	9. Just one Daily Green tablet a day gives you the important
10. Diss. and pan vegetables to bottle. SUPER: FORTIFIED WITH VITAMINS A, C & E PLUS BETA-CAROTENE	10. nutritional elements you'd get from eating these fresh, raw vegetables. And, Daily Greens are fortified with vitamins A, C, E plu beta-carotene.
11. Diss. back to anncr. with bottle sitting in display of vegetables.	11. So, if you aren't getting encu raw vegetables every day -- rely on Daily Greens --
12. Diss. to bottle, package and tablets on sweep	12. the food that not only gives y the real thing ... it gives it to you raw, so it can do you the most
13. Shrink above shot into mortise on black. SUPER: HELP YOUR BODY DEFEND ITSELF	13. Daily Greens -- to help your b defend itself.

ATTACHMENT D

VIDEO	AUDIO
1. Open on white type on black screen, as delivered in audio.	1. MALE ANNCR. V/P (Deep-Voiced): The following message concerns a revolutionary new concept in diet and nutrition.
2. Diss. to MCU of female anncr. as she holds up research.	2. ON-CAMERA FEMALE ANNCR.: According to this recent report fr the National Research Council, a combination of cruciferous
3. Diss. and pan display of fresh vegetables.	3. and carotene-rich vegetables h been found to help our bodies buil certain important biological defen:
4. Diss. back to her at display of fresh vegetables.	4. Of course, to get the most fror any vegetable, you should eat them But that's difficult to do every dε
5. Cut to ECU of bottles as she holds up bottle of Daily Greens	5. So I'd like to introduce you tc Daily Greens.
6. Hold above shot. SUPER: NOT JUST A VITAMIN...A FOOD	6. Daily Greens are NOT just anoth vitamin pill --
7. Diss. and move along vegetables and petri dishes of powdered vegetables	7. They're natural, fresh, crucife and carotene-rich vegetables, dehydrated and compressed
8. Diss. back to anncr. with bottle.	8. to give you the important nutri tional elements that could be so vi to your future health.

- 2 -

Video	Audio
9. Diss. to CU of bottle and vegetables SUPER: FORTIFIED WITH VITAMINS A, C & E PLUS BETA-CAROTENE	9. And, Daily Greens are fortifie with vitamin A, C and E ... plus beta-carotene.
10. Diss. back to anncr.	10. So, if you're not getting enou raw vegetables every day ...
11. Diss. to product shot	11. rely on Daily Greens --
12. Add SUPER: HELP YOUR BODY DEFEND ITSELF	12. to help your body defend itsel

Decision and Order

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Sections 5 and 12 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent PharmTech Research, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1750 Montgomery Street, in the City of San Francisco, State of California.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

Order

I

It is ordered, That respondent PharmTech Research, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of Daily Greens, or any

other product containing dehydrated vegetables, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, contrary to fact, that findings of the National Academy of Sciences, or findings contained in the 1982 Report entitled *Diet, Nutrition, and Cancer,* support the claim that use of the product is associated with a reduction in incidence of any type of cancer.

II

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of any product for personal or household use, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting in any manner, directly or by implication, the purpose, content, sample, reliability, results or conclusions of any scientific test, research article, or any other scientific opinion or data.

III

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, packaging, offering for sale, sale, or distribution of any product for personal or household use, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, concerning any benefit to health to be derived from using any such product unless, at the time of such representation, respondent possesses and relies upon reliable and competent scientific evidence that substantiates such representation. "Reliable and competent" shall mean for purposes of this Order those tests, analyses, research, studies, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

IV

It is further ordered, That respondent or its successors or assigns maintain accurate records:

1. Of all materials that were relied upon by respondent in disseminating any representation covered by this order.

2. Of all test reports, studies, surveys, or demonstrations in its possession or control or of which it has knowledge that contradict any representation made by respondent that is covered by this order.

Such records shall be retained by respondent or its successors or assigns for three years from the date that the representations to which they pertain are last disseminated. *It is further ordered,* That any such records shall be retained by respondent or its successors or assigns and that respondent or its successors or assigns shall make such documents available to the Commission for inspection and copying upon request.

V

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

VI

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions, and to all present and prospective distributors of products manufactured or marketed by respondent.

VII

It is further ordered, That respondent shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

CARTER HAWLEY HALE STORES, INC. d/b/a THE EMPORIUM and EMPORIUM-CAPWELL

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS

Docket C-3133. Complaint, May 9, 1984—Decision, May 9, 1984

This consent order requires a San Francisco, Calif. retailer to comply with the billing error resolution procedures of the Truth in Lending Act (the Act) and its implementing Regulation Z. Respondent must acknowledge a customer's written billing error notice within 30 days; resolve the dispute or mail an explanation as to why a statement is believed correct within 2 billing cycles; and maintain for at least two years, records evidencing compliance with the Act's provisions. Respondent is prohibited from attempting to collect any amount of a bill in dispute, including any finance charge computed on such amount; and must forfeit the right to collect the amount in dispute up to $50., should it fail to comply with any of the Act's requirements.

Appearances

For the Commission: *Ralph E. Stone* and *Earl Stackhouse.*

For the respondent: *Jeremy V. Wisot, MacFarlane, Schaefer & Haun,* Los Angeles, Calif.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder by the Board of Governors of the Federal Reserve System, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Carter Hawley Hale Stores, Inc., a corporation, doing business as The Emporium and Emporium-Capwell, hereinafter sometimes referre to as respondent, has violated the provisions of said Acts and th implementing regulation promulgated under the Truth in Lendin Act, and it appearing to the Commission that a proceeding by it i respect thereof would be in the public interest, hereby issues its cor plaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Carter Hawley Hale Stores, Inc. is corporation organized, existing and doing business under and by v tue of the laws of the State of California, with its principal office a place of business located at 550 South Flower Street, Los Ange

California. Respondent Carter Hawley Hale Stores, Inc. does business presently through a division under the name of "Emporium-Capwell" and has done business in the past through that same division under the name of "The Emporium" with the division's principal office located at 835 Market Street, San Francisco, California. Respondent Carter Hawley Hale Stores, Inc. is responsible for the formulation, control and direction of the policies, acts, and practices of its Emporium-Capwell division, including the acts and practices hereinafter set forth.

PAR. 2. Respondent Carter Hawley Hale Stores, Inc., through its aforesaid Emporium-Capwell division, advertises, sells, and distributes retail merchandise to the public.

PAR. 3. At all times relevant hereto, respondent in the ordinary course of business did and does regularly extend, offer to extend, arrange or offer to arrange "consumer credit" for its customer's purchases, and has been and is a "creditor" as those terms are defined in Section 226.2(p) and (s) of Regulation Z (12 C.F.R. 226), the implementing regulation of the Truth in Lending Act (15 U.S.C. 1601 *et seq.*), duly promulgated by the Board of Governors of the Federal Reserve System.[1] The transactions involve the extension of "open end credit," as defined in Section 226.2(x) of Regulation Z.

PAR. 4. Respondent maintains, and has maintained, a substantial course of business, including the acts and practices herein set forth, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

Count I

Alleging violations of the Truth in Lending Act and Regulation Z, nd of the Federal Trade Commission Act, the allegations of Paragraphs One through Four are incorporated by reference herein as if ılly set forth verbatim.

PAR. 5. Subsequent to October 28, 1975, pursuant to its aforesaid tensions of credit, respondent has in many instances received from stomers "proper written notification of a billing error," as defined Section 226.2(cc) of Regulation Z. In numerous such instances re- ındent has:

. Contrary to the requirements of Section 226.14(a)(1) of Regula- ı Z, failed to take any of the following actions within 30 days after ·ipt of said notification:

Mail or deliver to the customer a written acknowledgment there-

·eferences to the Truth in Lending Act and Regulation Z contained in this complaint shall refer to the Truth ing Act as amended to March 23, 1976 and Regulation Z as amended to March 23, 1977.

b. Make appropriate corrections in the customer's account and mail or deliver to the customer a written notice of the corrections; or

c. Mail or deliver to the customer a written explanation, after having conducted a reasonable investigation, setting forth the reasons why the billing is believed to be correct.

2. Contrary to the requirements of Section 226.14(a)(2) of Regulation Z, failed to take either of the following actions within the lesser of 90 days or two complete billing cycles from the date of receipt of the notification:

a. Make appropriate corrections in the customer's account and mail or deliver to the customer a written notice of the corrections; or

b. Mail or deliver to the customer a written explanation, after having conducted a reasonable investigation, setting forth the reasons why the billing is believed to be correct.

3. Contrary to the requirements of Section 226.14(a)(2) of Regulation Z, taken or caused action, prior to the time the dispute has been resolved, to collect:

a. A portion of the amount indicated in the customer's notification as being a billing error; or

b. A finance charge, late payment charge, or other charge computed on such disputed amount.

4. Contrary to the requirements of Section 226.14(b)(2) of Regulation Z, failed to credit customers' accounts with the finance charges, late payment charges or other charges imposed as the result of erroneous billings.

5. Contrary to the requirements of Section 226.14(f)(1) of Regulation Z, failed to forfeit its right to collect from the customer the amount indicated to be a billing error, including any finance charge or other charges imposed thereon, up to a maximum of $50.00 for each item or transaction indicated by the customer to be a billing error.

PAR. 6. Pursuant to Section 103(s) of the Truth in Lending Act, respondent's aforesaid failures to comply with the foregoing provision of Regulation Z constitute violations of that Act, and, pursuant to Section 108 thereof (15 U.S.C. 1607), respondent has thereby engaged in unfair and deceptive acts and practices in violation of Section 5(a)(1) of the Federal Trade Commission Act, all to the prejudice and injury of the public.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a

copy of a draft of complaint which the San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Carter Hawley Hale Stores, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 550 South Flower Street, Los Angeles, California. Respondent Carter Hawley Hale Stores, Inc. does business presently through a division under the name of "Emporium-Capwell" and has done business in the past through that same division under the name of "The Emporium" with the division's principal office located at 835 Market Street, San Francisco, California.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

Order

A. For the purposes of this Order, the terms *billing error, billing-error notice, cardholder, consumer credit,* and *credit card* shall be defined as these terms are defined in Regulation Z (12 C.F.R. 226), the implementing regulation of the Truth in Lending Act (15 U.S.C. 1601 *et seq.*).[1]

[1] All reference to the Truth in Lending Act and Regulation Z contained in this Order shall refer to the Truth in Lending Act as amended to March 31, 1980 and Regulation Z as amended to April 1, 1981.

B. This Order shall apply only to the Emporium-Capwell division of Carter Hawley Hale Stores, Inc.

I.

It is ordered, That respondent Carter Hawley Hale Stores, Inc., a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension by or on behalf of Emporium-Capwell, or any organization continuing the business of Emporium-Capwell, of "open end credit," including "consumer credit" extended through use of a "credit card," as those terms are defined in Regulation Z, the implementing regulation of the Truth in Lending Act, do forthwith cease and desist from:

A. Failing, within 30 days after receipt of any billing-error notice, to mail or deliver a written acknowledgement thereof to the customer's current designated address as required by Section 226.13(c)(1) of Regulation Z, unless:

1. the customer has agreed, within such 30-day period, that the periodic statement is correct; or
2. respondent has taken, within such 30-day period, the applicable action specified in Paragraph I.B.1-3 of this Order.

B. Failing, not later than two complete billing cycles (and in no event more than 90 days) from the date of receipt of any billing-error notice, to resolve the dispute by:

1. correcting the billing error and crediting the customer's account in the full amount indicated by the customer to have been erroneously billed and related finance or other charges, as applicable, and mailing or delivering to the customer a written notification of the correction(s) as required by Section 226.13(e) of Regulation Z; or
2. correcting the billing error and crediting the customer's account by an amount different from that indicated by the customer as being erroneously billed and related finance or other charges, as applicable, and mailing or delivering to the customer a written explanation setting forth the reasons for respondent's belief that the billing error alleged by the customer is incorrect in part, accompanied by copies of documentary evidence of the customer's indebtedness if such evidence has been requested by the customer, as required by Section 226.13(f) of Regulation Z; or
3. mailing or delivering to the customer, after conducting a reasonable investigation, a written explanation that sets forth the reason(s) why respondent believes the periodic statement is correct and, if the

customer has requested, furnishing copies of documentary evidence of the customer's indebtedness, as required by Section 226.13(f) of Regulation Z;

Provided, however, That respondent need not perform the actions specified in this Paragraph I.B. if the customer has agreed, not later than two complete billing cycles (and in no event more than 90 days) from the date of respondent's receipt of the billing-error notice, that the periodic statement is correct.

C. Taking any action or causing any action to be taken, prior to the time the dispute has been resolved, as provided in Paragraph I.B. of this Order, to collect any portion of any required payment that the consumer believes is related to the disputed amount, including related finance or other charges.

D. Failing, in each instance where respondent does not comply with all applicable requirements of Section 226.13 of Regulation Z, to forfeit the right to collect from the customer the amount indicated to be a billing error, including corresponding finance and other charges imposed thereon, up to $50.00, as required by Section 161(e) of the Truth in Lending Act, 15 U.S.C. 1666(e).

E. Failing to comply with any other requirement of Section 226.13 of Regulation Z.

F. Failing to keep evidence of compliance with Regulation Z for a period of two (2) years as required by Section 226.25(a) of Regulation Z, and to make the records available for inspection as required by Section 226.25(b) of Regulation Z.

II.

A. *It is further ordered,* That respondent distribute a copy of this Order to each of Emporium-Capwell's supervisory personnel having procedural or policy responsibilities with respect to the subject matter of this Order, and that respondent secure a signed statement acknowledging receipt of said Order.

B. *It is further ordered,* That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution of subsidiaries or divisions or any other change in the corporation which may affect compliance obligations arising out of the order.

C. *It is further ordered,* That the respondent herein shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

In the Matter of

GREAT LAKES CHEMICAL CORPORATION, ET. AL.

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE FEDERAL COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket No. 9155. Complaint, June 23, 1981—Decision, May 23, 1984

This consent order requires the leading producer of elemental bromine and brominated flame retardants in the U.S., to grant PPG Industries, Inc. (PPG), according to a prescribed non-exclusive licensing agreement, all the latest technology and know-how on brominated flame retardants acquired from Velsicol Chemical Corp. The order also requires Great Lakes to enter into other agreements that would govern the operation and ownership rights of Arkansas Chemicals, Inc. (ACI), a joint bromine production venture between Great Lakes and PPG. The agreements eliminate certain restrictions on PPG's use of bromine purchased from ACI; permit PPG to sell elemental bromine in the merchant market; allow PPG to use ACI bromine in the production of all brominated compounds, including flame retardants; and require Great Lakes to purchase a specified amount of bromine from ACI annually. In addition to specific record keeping and reporting requirements, the order prohibits Great Lakes from acquiring any concern engaged in the production of elemental bromine or brominated flame retardants without prior Commission approval for a period of 10 years.

Appearances

For the Commission: *John V. Lacci,* Washington, D.C.

For the respondent: *Donald W. Ruppert, Dan Vittum, Donald G. Kempp, Jr., David B. Garten, Michael W. Vary, Richard W. Young, Kirkland & Ellis,* Chicago, Ill. and *Daniel F. Attridge, Kirkland & Ellis,* Washington, D.C. for respondent Great Lakes Chemical Corporation.

Complaint

The Federal Trade Commission, having reason to believe that the above named respondents, Great Lakes Chemical Corporation ("Great Lakes"), Northwest Industries, Inc. ("Northwest"), and Velsicol Chemical Corporation ("Velsicol"), subject to the jurisdiction of the Commission, have agreed to an acquisition by Great Lakes of Velsicol's El Dorado, Arkansas facility ("El Dorado") and its bromine derivative technology and patents that, if consummated, would result in a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45); and it appearing that a proceeding by the Commission

in respect thereof would be in the public interest, the Commission hereby issues its Complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

I. *Definitions*

1. For the purposes of this Complaint, the following definitions shall apply:

(a) *Elemental bromine* is a nonmetallic halogen found in natural brines, salt lakes, seas, and oceans;
(b) A *flame retardant* is a chemical compound which when added to, or reacted with, a specific polymer system ((*e.g.*, a plastic) serves to reduce the flammability of the polymer system by making it more difficult to ignite or by making it burn more slowly;
(c) A *brominated flame retardant* is a flame retardant based on the element bromine; and
(d) *ACI* is Arkansas Chemicals, Inc., a 50-50% joint venture between Great Lakes and PPG Industries, Inc. engaged in the production of elemental bromine in El Dorado, Arkansas.

II. *Great Lakes Chemical Corporation*

2. Respondent Great Lakes Chemical Corporation is a Delaware corporation with its principal place of business in West Lafayette, Indiana. Great Lakes' major manufacturing facilities are located in El Dorado, Arkansas and Marysville, Arkansas.
3. Great Lakes is engaged in the production and sale of elemental bromine, brominated flame retardants, industrial and specialty chemicals (*e.g.*, water sanitizers and oil and gas drilling completion fluids), and agricultural pesticides. In 1980, Great Lakes had net sales of $126.7 million and a net income of $18.9 million.
4. Great Lakes is the leading producer and marketer of elemental bromine and brominated flame retardants in the United States.
5. Great Lakes is actively involved in the day-to-day management and business decisions of ACI, a major domestic producer of elemental bromine.

III. *Northwest Industries, Inc.*

6. Northwest Industries, Inc. is a Delaware corporation with its principal place of business in Chicago, Illinois. Northwest is a management and holding company whose operating units produce and sell industrial, consumer, and chemical products. In 1980, Northwest had net sales of $2.8 billion and a net income of $155.4 million.

IV. *Velsicol Chemical Corporation*

7. Velsicol Chemical Corporation, a wholly owned subsidiary of Northwest, is a Delaware corporation with its principal place of business in Chicago, Illinois. Velsicol was formed through the 1976 merger of the Michigan Chemical Corporation and the Velsicol Chemical Corporation, then both wholly owned subsidiaries of Northwest.

8. Velsicol is engaged in the production and sale of elemental bromine, brominated and non-brominated flame retardants, other specialty chemicals, and agricultural pesticides. All of Velsicol's elemental bromine and most of its flame retardants are produced at its El Dorado, Arkansas facility.

9. Velsicol is a leading domestic producer of brominated flame retardants and is a significant producer and marketer of elemental bromine in the United States.

V. *Jurisdiction*

10. At all times relevant herein, each of the companies named in this complaint has been engaged in or affected commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

VI. *The Proposed Acquisition*

11. On March 9, 1981, Great Lakes agreed to acquire Velsicol's elemental bromine and brominated flame retardant businesses for $29.7 million. Among the assets included in the agreement are Velsicol's El Dorado elemental bromine and brominated flame retardant facility, all of Velsicol's bromine derivative research, technology, and patents developed at El Dorado and Velsicol's Ann Arbor, Michigan research facility, and Velsicol's bromine brine reserves.

VII. *Trade and Commerce*

12. The relevant product markets are the following:

(a) the production or sale of elemental bromine in the United States ("the elemental bromine market"); and

(b) the production or sale of brominated flame retardants in the United States. ("the brominated flame retardant market").

13. The relevant geographic market is the United States as a whole.

14. In 1980, approximately 371 million pounds of elemental bromine was produced in the United States for a total value of approximately $90 million.

15. The United States elemental bromine market is a highly concentrated industry with a four-firm concentration ratio of approxi-

mately 94.6% based on industry production in 1980. The top two firms, Great Lakes and Dow Chemical Company, accounted for approximately 65.3% of industry production in 1980. Only five firms produced elemental bromine in the United States in 1980, and one of these firms, ACI, is 50% owned and actively managed in its day-to-day operations by Great Lakes.

16. There is a trend toward increasing concentration in the elemental bromine market and the proposed acquisition of Velsicol's assets by Great Lakes will increase the level of four firm concentration in the elemental bromine industry from approximately 94.6% to approximately 100%.

17. Barriers to entry into the elemental bromine market are substantial.

18. Great Lakes and Velsicol are substantial actual competitors in the elemental bromine market.

19. In 1980, Great Lakes was the largest U.S. producer of elemental bromine with a market share of approximately 33%. In addition, Great Lakes actively managed the operations of ACI, the fourth largest producer of elemental bromine, with approximately 8.4% of industry production in 1980.

20. In 1980, Velsicol ranked fifth in the production of elemental bromine in the U.S., with a market share of approximately 5%.

21. Both Great Lakes and Velsicol were leading marketers of elemental bromine in 1980.

22. In 1980, approximately 62.3 million pounds of brominated flame retardants were produced in the United States market. This production had a market value of approximately $60 million.

23. The United States brominated flame retardant market is a highly concentrated industry with the top four firms accounting for approximately 87.7% of industry production in 1980.

24. Great Lakes' acquisition of Velsicol's brominated flame retardant assets will increase the already substantial levels of concentration in the industry. Great Lakes' acquisition will increase the four firm concentration in the brominated flame retardant market from approximately 87.7% to approximately 92.3% and the two firm ratio from approximately 68.9% to approximately 81.0%.

25. Barriers to entry into the brominated flame retardant market are substantial.

26. Great Lakes and Velsicol are substantial actual competitors in the brominated flame retardant market.

27. In 1980, Great Lakes was the leading U.S. producer of brominated flame retardants and accounted for over 50% of industry production.

28. In 1980, Velsicol ranked third in the brominated flame retardant market in the U.S. with a market share of approximately 12%.

VIII. *Effects of the Acquisition*

29. The effect of the proposed acquisition may be substantially to lessen competition or to tend to create a monopoly in the elemental bromine market and in the brominated flame retardant market in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), in the following ways, among others:

(a) Substantial actual and potential competition between Great Lakes and Velsicol in the relevant markets will be eliminated;
(b) Substantial actual and potential competition between Velsicol and other companies engaged in the production or sale of relevant products will be eliminated;
(c) The ability of Great Lakes' competitors to compete in the elemental bromine market and the brominated flame retardant market will be substantially diminished;
(d) Great Lakes' substantial position in the elemental bromine market and its dominant position in the brominated flame retardant market may be further strengthened and entrenched at the expense of Great Lakes' actual and potential competitors;
(e) The already high levels of industry concentration in the relevant markets will be significantly increased and the trend toward concentration in these markets will be accelerated; and
(f) Barriers to entry in the relevant markets will be significantly raised.

IX. *Violations Charged*

The proposed acquisition constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and, if consummated, Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

DECISION AND ORDER

The Commission having heretofore issued its complaint charging respondents, Great Lakes Chemical Corporation, Northwest Industries, Inc., and Velsicol Chemical Corporation, with violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

Respondent Great Lakes Chemical Corporation ("respondent"), its

attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 3.25 of its Rules, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Great Lakes Chemical Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Highway 52 Northwest, in the City of West Lafayette, State of Indiana.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

Order

For Purposes of this Order

(a) *PPG* means PPG Industries, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at One Gateway Center, in the City of Pittsburgh, State of Pennsylvania;

(b) *ACI* means Arkansas Chemicals, Inc., a 50-50 percent joint venture between Great Lakes and PPG, and a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located in the State of Arkansas;

(c) *bromine* means elemental bromine, atomic number 35, the nonmetallic halogen found in natural brines, salt lakes, seas and oceans;

(d) *brominated flame retardants* mean flame retardants containing the element bromine;

(e) *brominated compounds* means chemical compounds, including flame retardants, containing the element bromine;

(f) *concern* means any company or corporation, its directors, officers, employees, and agents; its domestic and foreign predecessors, successors, divisions, subsidiaries, affiliates, and joint ventures (if the company owns or controls 10% or more of the joint venture); and the directors, officers, employees, and agents of the company's predecessors, successors, divisions, subsidiaries, affiliates, and joint venture partners as described above. The words *subsidiary* and *affiliate* refer to any partial as well as total ownership between corporations.

I.

It is ordered, That Great Lakes, its successors and assigns, and its officers, directors, agents, representatives and employees (hereinafter "Great Lakes") shall, upon written application, grant to PPG a non-exclusive license to produce and sell certain brominated compounds in the form of the non-exclusive license agreement set forth in Attachment A. Great Lakes shall remain in compliance with the agreement set forth in Attachment A, and, without prior approval of the Federal Trade Commission, shall not permit any modification, directly or indirectly, of any of the terms of the license agreement referred to in this paragraph.

II.

It is further ordered, That Great Lakes shall notify the Commission in writing of each PPG written request for technology pursuant to the license agreement set forth in Attachment A.

III.

It is further ordered, That Great Lakes shall enter into the agreements set forth in Attachment B, and Appendices 1 and 2 thereto, relating to the operation and ownership rights of ACI, its successors and assigns. Great Lakes shall remain in compliance with the agreements set forth in Attachment B, and the Appendices thereto, and, without prior approval of the Federal Trade Commission, shall not permit any modification, directly or indirectly, of any of the terms of the agreements referred to in this paragraph. In addition, prior to entering into dissolution as provided for in Section 3(b) of Appendix

to Attachment B, Great Lakes shall use its best efforts to cause ACI ɔ be sold as an ongoing entity.

IV.

It is further ordered, That, for a period of ten years from the date that this Order becomes final or the date at which all of its obligations under Attachment A cease, whichever is later, Great Lakes shall provide to the Commission copies of all proposed amendments or modifications which have been communicated by Great Lakes or PPG to the other party with respect to any of the terms contained in the agreement set forth in Attachment A. In addition, for a period of ten years from the date that this Order becomes final, Great Lakes shall provide to the Commission copies of all proposed amendments or modifications which have been communicated by Great Lakes or PPG to the other party with respect to any of the terms contained in the agreements set forth in Attachment B, or to any other agreement referenced therein.

V.

It is further ordered, That, Great Lakes shall provide to the Federal Trade Commission copies of all communications between Great Lakes and PPG regarding changes or alleged breaches of the agreements contained in Attachments A and B.

VI.

It is further ordered, That, for a period of ten (10) years from the date this Order becomes final, Great Lakes, its subsidiaries, affiliates, divisions, successors and assigns shall not, without the prior approval of the Federal Trade Commission, directly or indirectly, acquire any stock, share capital or equity interest in any concern engaged in, or the assets of any concern used in, the manufacture of elemental bromine or brominated flame retardants; *provided, however,* nothing in this Order shall prohibit Great Lakes from (1) engaging in any acquisition of a foreign concern that, in the calendar year of the proposed acquisition or in any of the five full calendar years immediately preceding the acquisition, has not manufactured or sold elemental bromine or brominated flame retardants in, or exported these products to, the United States, if, and only if, that foreign concern's worldwide production of elemental bromine did not exceed ten million pounds in any of the three full calendar years immediately preceding the acquisition and its total worldwide production of bromi-

nated flame retardants did not exceed four million pounds in any of the three full calendar years immediately preceding the acquisition; (2) becoming a licensee of any patents or technology from such concerns; or (3) making purchases or sales in the ordinary course of business. The application of this paragraph shall be construed to include the acquisition by Great Lakes of any stock or assets of ACI, its successors and assigns, except for adjustments of ownership in ACI as provided for in Paragraph 5 of Attachment B to this Order.

VII.

It is further ordered, That, commencing on the effective date of this Order, respondent Great Lakes shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other proposed change in the corporation which may affect compliance obligations arising out of this Order.

NOTE: Portions of the attachments relating to the Decision and Order have been redacted because they are commercially sensitive. The bracketed words have been inserted by the Commission in some instances to describe the redacted information.

ATTACHMENT A

AGREEMENT

THIS AGREEMENT is made this September 16, 1983, between GREAT LAKES CHEMICAL CORPORATION, a Delaware corporation whose principal office address is P.O. Box 2200, West Lafayette, Indiana 47906, referred to herein as "Great Lakes"; and PPG INDUSTRIES, INC., a Pennsylvania corporation having its principal office at One Gateway Center, Pittsburgh, Pennsylvania 15222, referred to herein as "PPG"; and the same

WITNESSETH

A. PPG has for many years engaged in the manufacture and sale of ethylene dibromide. It has also engaged in the manufacture and sale of flame retardant chemicals which are not bromine based and has undertaken to develop bromine containing products including flame retardants.

B. PPG intends to enter into the manufacture and sale of bromine based flame retardant chemicals, and to that end it desires to obtain a non-exclusive license to use certain technology owned by Great Lakes which is useful in the production of certain bromine based flame retardant chemicals.

C. Great Lakes is willing to grant to PPG a non-exclusive license to said technology, upon the terms and subject to the conditions and limitations set out in this Agreement.

TERMS

In consideration of the covenants and agreements hereinafter set forth, it is agreed between the parties hereto as follows:

I

General Provisions

1.01 *Scope of Agreement.* This Agreement looks to the grant by Great Lakes to PPG of a non-exclusive license to use certain technology owned by Great Lakes which is useful in the manufacture of certain bromine based flame retardant chemicals.

1.02 *Definitions.* As used herein, the following words and phrases have the following meanings:

a. Product(s) means any one (1) or more of Group A Products and Group B Products.

b. Group A Product means [any one or more of four brominated flame retardants based upon technology acquired from Velsicol Chemical Corporation without substantial modification by Great Lakes.]

c. Group B Product means [any one or more of six brominated flame retardants based upon technology acquired from Velsicol Chemical Corporation with technological modifications made by Great Lakes.]

d. Product Technology means, for each Product, all patent applications and registrations and all of the information relating to such Product disclosed by Great Lakes to PPG pursuant to its obligations under Articles II and III, but shall expressly exclude non-confidential information.

e. Product Technology Conditional License Term, for each Product, means the period ending on the fifth (5th) anniversary of the date on which PPG first sells commercial quantities of such Product manufactured using Product Technology; provided, sales made for the primary purpose of starting the Term and not as the result of good faith best efforts to prosecute commercial production and marketing shall not be deemed the selling of commercial quantities for the purposes of this definition.

f. Net Sales sold by PPG means the gross invoice price of Products less (i) freight charges and demurrages (if any), (ii) sales and use taxes or other governmental charges, taxes, or imposts on the sale or shipment of Products, and (iii) returns. Product used, consumed, or incorporated into another substance, by PPG (or an entity in which it is a participant) shall be deemed sold at the time of such use, consumption, or incorporation at a gross invoice price equal to the gross invoice price then being charged by PPG for the Product sold to others as such, unless the sales of the Product to others are so insubstantial that they do not truly reflect market forces, in which case the Product shall be deemed sold at the gross invoice price then being charged by Great Lakes on the sale of the same Product to third parties, and the Net Sales so generated shall be calculated accordingly. If there are no qualifying sales by either PPG or Great Lakes, the parties shall negotiate in good faith a constructive Net Sales for the Product so used, consumed, or incorporated, allowing for normal commercial margins and profits.

g. Request Date, for each Group A Product, means the earlier of the date on which PPG makes the request for preliminary production data for such Product, as contemplated by Section 2.02, or the date on which PPG makes the request for Product Technology for such Product, as contemplated by Section 2.03. Request Date, for each Group B Product, means the earliest of the date on which PPG makes the request for preliminary production data for such Product, as contemplated by Section 3.02, the date on which PPG makes the request for acquired Product Technology for such Product, as contemplated by Section 3.03, or the date on which PPG makes its request for Product Technology for such Product, as contemplated by Section 3.04.

II

Group A Product Technology

2.01 *Non-Confidential Information.* Within 45 days after receipt of PPG's written request for the non-confidential information relating to a Group A Product, Great Lakes shall furnish to PPG, [upon payment of a negotiated amount,] all non-confidential and non-proprietary documentary information in its possession relating to each such Group A Product, such as publications, technical bulletins, technical service bulletins, and data sheets generally available to customers, and a list of all patent registrations then owned by Great Lakes and relating to such Group A Product. Upon request of PPG, Great Lakes shall provide PPG with Great Lakes' best estimate of the investment required to construct a plant for the manufacture of each Group A Product.

2.02 *Preliminary Production Data.* Within ninety (90) days after the receipt of PPG's request therefor, together with a payment of [a negotiated amount] per Product, Great Lakes will, as to each Group A Product, except [one of the Group A Products,] for which it receives such request and payment, furnish to PPG written documentation for such Group A Product consisting of:

a. a list of major equipment necessary for the manufacture of such Group A Product, in sufficient detail for PPG to make accurate estimates of productivity and costs of procuring, assembling, and erecting the same in a condition suitable for the commercial production of such Group A Product;

b. a list of raw materials necessary for the manufacture of such Group A Product;

c. manpower and utility requirements;

d. a table of expected yields for such Group A Product;

e. a list of those items a. through p. in subsection 2.03(a) which will not be available; and

f. a statement of the significant differences (if any) between the foregoing items a. through d. as practiced on the date of this Agreement and as practiced on the date of the request, in sufficient detail to allow PPG to evaluate a fair fee if one is to be negotiated pursuant to subsection 2.03(b).

As to each Group A Product, except [one of the Group A Products,] for which PPG does not make either a request and payment under this Section 2.02 or a request and payment under Section 2.03 on or before the fourth anniversary of the date of this Agreement, this Article II shall become void and of no further effect.

2.03 *Product Technology.* (a) Within ninety (90) days after the receipt of PPG's written request therefor, together with an additional payment of [a negotiated amount] per Group A Product, Great Lakes will, as to each Group A Product, except [one of the Group A Products,] for which it receives such request and payment, furnish to PPG the Product Technology owned or possessed by Great Lakes for such Group A Product, except [one of the Group A Products,] as such technology is practiced by Great Lakes on the date of this Agreement, including, without limitation, written documentation adequate for PPG to design, construct, and operate a plant for the manufacture on a commercial sale of such Product. Such Product Technology shall include such of the following items as are available with respect to such Product:

a. process description;
b. material balance;
c. process and instrument flow diagram;
d. equipment list and specifications;
e. quality control methods;
f. equipment layouts;
g. raw material specifications;
h. wast stream analysis and toxicity data;

i. operations manuals;
j. motor lists;
k. instrument lists;
l. raw material requirements;
m. utility requirements;
n. manpower requirements;
o. maintenance equipment;
p. Product application techniques.

With respect to [one of the Group A Products,] within ninety (90) days of receiving such a request and payment, Great Lakes will furnish to PPG the entire production technology of [one of the Group A Products] as acquired from Velsicol Chemical Corporation by Great Lakes on July 15, 1981. As to each Group A Product for which PPG does not make such written request and payment on or before the fifth anniversary of the date of this Agreement, Article II shall become void and of no further affect. If a request and payment is made under this Section 2.03 without a prior request as to that Group A Product under Section 2.02, Great Lakes shall not be obligated to make the disclosures required of it under Section 2.02 (except to the extent that they are embodied in the disclosures required of it by this Section 2.03) and PPG shall not be obligated to make the payment referred to in Section 2.02.

(b) Except with respect to [one of the Group A Products,] if the request given under subsection 2.03(a) above states that PPG desires the Product Technology to be as such technology is practiced by Great Lakes on the date the request is made, the parties shall promptly meet and negotiate in good faith the amount of the fee which PPG shall pay for such additional technology.

III

Group B Product Technology

3.01 *Non-Confidential Information.* Within 45 days after receipt of PPG's written request for the non-confidential information relating to a Group B Product, Great Lakes shall furnish to PPG, [upon payment of a negotiated amount,] all non-confidential and non-proprietary documentary information in its possession relating to such Group B Product, such as publications, technical bulletins, technical service bulletins, and data sheets generally available to customers, and a list of all patent registrations then owned by Great Lakes and relating to such Group B Product. Upon request of PPG, Great Lakes shall also provide PPG with Great Lakes' best estimate of the investment required to construct a plant for the manufacture of each Group B Product.

3.02. *Preliminary Production Data.* Within one hundred fifty (150) days after the receipt of PPG's request therefor, together with a payment of [a negotiated amount] per Product, Great Lakes will, as to each Group B Product for which it receives such request and payment, furnish to PPG (a) written documentation for each such Group B Product, based on the Product Technology for such Product as it existed on July 15, 1981, and (b) written documentation for each such Group B Product, based on the Product Technology for such Product as it existed on the date of this Agreement. In both cases, such written documentation shall consist of:

a. a list of major equipment necessary for the manufacture of such Group B Product, in sufficient detail for PPG to make accurate estimates of productivity and costs of procuring, assembling and erecting the same in a condition suitable for the commercial production of such Group B Product;

b. a list of raw materials necessary for the manufacture of such Group B Products;

c. manpower and utility requirements;

d. a table of expected yields for such Group B Product;

e. a list of those items a. through p. referred to in subsection 2.03(a) which will not be available; and

f. a statement of the significant differences (if any) between the foregoing items a. through d. as practiced on the date of this Agreement and as practiced on the date of the request, in sufficient detail to allow PPG to evaluate a fair fee if one is to be negotiated pursuant to subsection 3.05.

As to each Group B Product for which PPG does not make either a request and payment under this Section 3.02 or a request and payment under Section 3.03 or 3.04 on or before the fourth anniversary of the date of this Agreement, this Article III shall become void and of no further effect.

3.03 *Product Technology Acquired by Great Lakes.* Within one hundred and fifty (150) days after receipt of PPG's written request therefor, together with an additional payment of [a negotiated amount] per Group B Product, Great Lakes will, as to each Group B Product for which it receives such request and payment, furnish to PPG the entire Product Technology for such Group B Product acquired by Great Lakes from Velsicol Chemical Corporation, as such technology existed on July 15, 1981 (the date of such acquisition), including, without limitation, written documentation used for or intended for use in the manufacture of such Product and the design, construction and operation of a plant for the commericial manufacture, where applicable, of such Product. Such Product Technology shall include the items listed as items a. through p. of subsection 2.03(a) which are available with respect to such Product.

As to each Group B Product for which PPG does not make such written request and payment on or before the fifth anniversary of the date of this Agreement, Article III shall become void and of no further effect. If a request and payment is made under this Section 3.03 without a prior request as to that Group B Product under Section 3.02, Great Lakes shall not be obligated to make the disclosures required of it under Section 3.02 (except to the extent that they are embodied in the disclosures required of it by this Section 3.03) and PPG shall not be obligated to make the payment referred to in Section 3.02.

3.04 *Product Technology Developed by Great Lakes.* Within one hundred and eighty (180) days after receipt of PPG's written request therefor, together with the additional payment set out below, Great Lakes will, as to each Group B Product for which it receives such request and payment, furnish to PPG the entire Product Technology for such Group B Product, as such technology is practiced on the date of the Agreement, including, without limitation, written documentation used for or intended for use in the manufacture of such Product and the design, construction and operation of a plant for the commercial manufacture, where applicable, of such Group B Product. Such Product Technology shall include those of the items listed as items a. through p. of Section 2.03 which are available with respect to such Product.

The amount of the payment to be made is as follows:

[For each Group B Product, a negotiated amount.]

As to each Group B Product for which PPG does not make such written request and payment on or before the fifth anniversary of the date of this Agreement, Article III shall become void and of no further effect. If a request and payment is made under this Section 3.04 without a prior request as to that Group B Product under Section 3.02, Great Lakes shall not be obligated to make the disclosures required of it under Section 3.02 (except to the extent that they are embodied in the disclosures required of it by this Section 3.04) and PPG shall not be obligated to make the payment referred to in Sections 3.02.

3.05 *Later Development* If the request given under subsection 3.04 states that PPG desires the Product Technology to be as such Technology is practiced by Great Lakes

on the date the request is made, the parties shall promptly meet and negotiate in good faith the amount of the fee which PPG shall pay for such additional technology.

IV.

Licenses

4.01 *Group A Product Technology.* Upon the condition that (and only so long as) PPG makes timely payment of the royalty with respect to that Group A Product, as provided in Section 5.01, Great Lakes hereby grants to PPG the non-exclusive irrevocable right and license to use and practice, anywhere in the world, all Product Technology relating to such Group A Product furnished to PPG by Great Lakes pursuant to Article II.

4.02 *Group B Product Technology.* Upon the condition that (and only so long as) PPG makes timely payment of the royalty with respect to that Group B Product, as provided in Section 5.02, Great Lakes hereby grants to PPG the non-exclusive irrevocable right and license to use and practice, anywhere in the world, all Product Technology relating to that Group B Product furnished to PPG by Great Lakes pursuant to Article III.

4.03 *Provisions Common to Licenses.*

(a) Prior to the expiration of the Product Technology Conditional License Term for each Product for which Product Technology has been furnished pursuant to Articles II and III, the rights and licenses granted under sections 4.01 and 4.02 may not be assigned or sublicensed, in whole or in part, to any other legal entity except as and to the extent as may be expressly set out in this instrument. However, provided that such other legal entity first executes an instrument in form and content binding such other entity to all obligations of confidentiality agreed to by PPG in Section 8.01, PPG may, with respect to each Product, subject to the conditions hereafter set out, contract with no more than two entities for those entities to toll convert or custom manufacture for PPG each Product using Product Technology licensed to PPG hereunder; and PPG is hereby authorized to grant such a sublicense as may be strictly necessary for this purpose. The conditions of the preceding sentence are:

First - that for the purpose of selecting toll converters or custom manufacturers, PPG may disclose Product Technology under confidentiality obligations consistent with Section 8.01 to no more than four such potential toll converters or custom manufacturers.

Second - that PPG retain title to the entirety of the Product so manufactured or toll-converted or that the entirety of the Product so manufactured or toll-converted be sold by the manufacturer directly to PPG or to one of its wholly-owned subsidiaries.

Third - that PPG (or its wholly owned subsidiary) shall not resell, directly or indirectly, more than ten percent (10%) of the Product so manufactured or toll-converted to the entity which manufactured or toll-converted it or to any entity which has any material equity in such custom manufacture or toll converter.

Fourth - that any sub-license granted by PPG pursuant to this Section 4.03 shall be exercisable by the grantee thereof only and solely for the purpose of toll converting or custom manufacturing the Product for PPG.

(b) In connection with the sale of a Product produced under a license granted under Sections 4.01 or 4.02, PPG may grant to its customers of that Product the non-exclusive, irrevocable label license to use and sell that Product under any patent owned by Great Lakes covering the use of that Product.

V

Royalties

5.01 *Royalties on Group A Products.* In consideration for the right and license granted by Great Lakes to PPG pursuant to Section 4.01, PPG shall pay to Great Lakes, at the

address designated by Great Lakes, a royalty calculated as [a negotiated percentage royalty] of the Net Sales of each Group A Product manufactured using Product Technology and sold during the Product Technology Conditional License Term for such Product.

5.02 *Royalties on Group B Products.* In consideration of the right and license granted by Great Lakes to PPG pursuant to Section 4.02, PPG shall pay to Great Lakes, at the address designated by Great Lakes, a royalty calculated as [a negotiated percentage royalty] of the Net Sales of each Group B Product manufactured using Product Technology, but not more than [a negotiated amount] for any one Group B Product.

5.03 *Time of Payment.* For purposes of Sections 5.01 and 5.02, a Product shall be deemed "sold" by PPG as of the date it is used, consumed, incorporated, shipped or invoiced, whichever is earlier. The royalties payable pursuant to Sections 5.01 and 5.02 shall be computed and paid quarterly. On or before the last day of each April, July, October, and January, PPG shall pay to Great Lakes the royalty contemplated by Sections 5.01 and 5.02 due and payable with respect to the immediately preceding calendar quarter.

5.04. *Medium of Payment.* All royalties due hereunder shall be paid in United States dollars. If sales are effected in a currency other than in United States dollars, then for the purpose of calculating the royalties payable hereunder, the rate of exchange between the United States dollars and the currency of sale shall be the average of the closing dollar buy and sell rates for such currency quoted by Chemical Bank, New York, New York, on the last New York City business day of the calendar quarter in which the sale occurs.

5.05 *Unconditional License.* Upon the expiration of the Product Technology Conditional License Term for each Product (so long as all royalties payable during said Term have been paid in full) PPG shall have an irrevocable non-exclusive transferable right and license in perpetuity to use, practice, license, assign, and sell the Product Technology as to each such Product anywhere in the world, and the provisions of Section 4.03 shall not apply.

5.06 *Failure to Pay.* In the event that PPG defaults by failing to pay, promptly when due, any installment of the royalties to be paid by it under this Article V with respect to any Product, or by failing to observe or perform any other obligation or condition to be observed or performed by it hereunder, Great Lakes may, at its option, give PPG written notice specifying the thing or matter in default. If the default is a delinquent payment it shall bear interest at the prime rate charged by the Chemical Bank in New York, plus two percent (2%). Unless such default is cured within two (2) months following receipt of such notice, or if such default cannot be cured within that time and PPG fails to diligently make efforts to cure the default, Great Lakes may give further written notice terminating this Agreement and all rights and licenses granted by it hereunder; provided, that Great Lakes gives the Federal Trade Commission two (2) months advance written notice that Great Lakes may terminate this Agreement pursuant to this provision. Said notice to the Federal Trade Commission may be given at the same time that Great Lakes gives PPG notice of the default. In the event it is impossible to cure the default, the parties shall (unless Great Lakes waives the default) enter into good faith negotiations to afford Great Lakes reasonable recourse, other than termination, for the default. Termination of this Agreement pursuant to this Section 5.06 shall not release PPG from its obligations to pay the royalties which have become payable to and including the date of termination. This remedy shall not be exclusive, but shall be in addition to any and all other remedies available to Great Lakes in the event of a default by PPG hereunder.

VI

Technical Assistance

6.01 *On-Site Demonstration.* Within ninety (90) days after it has furnished to PPG the Product Technology for a Group A Product, except [one of the Group A Product,] as provided in Section 2.03, or the Product Technology for a Group B Product, as provided in Section 3.04, Great Lakes shall invite PPG to send representatives to attend on-site demonstrations and to observe such actual operations and be adequately advised by Great Lakes with respect thereto as may be necessary or appropriate to facilitate exploitation by PPG of the Product Technology for such Product. The demonstrations and operations will be conducted at the office, laboratory, and manufacturing facility designated by Great Lakes. The demonstrations and operations contemplated by this Section will be completed within one hundred twenty (120) days after the date of Great Lakes' invitation to PPG.

6.02 *Start-Up Advice.* Except with respect to [one of the Group A Products] upon request of PPG, Great Lakes shall send to the manufacturing location designated by PPG one (1) or more experienced and qualified engineers to assist in the start-up of not more than one (1) of PPG's plants for the manufacture of each Product, so long as such start-up occurs within four (4) years after the Request Date; provided, that Great Lakes shall not be required by this Section 6.02 to provide assistance at more than an aggregate of three (3) plant sites. Said engineer(s) shall not be obligated to spend more than ten (10) man-days in assisting the start-up of any one such plant.

6.03 *Expenses.* PPG shall bear the entire cost it incurs in the sending of its representatives to attend demonstrations and observe operations pursuant to Section 6.01, including transportation, lodging, and meals. PPG will reimburse Great Lakes for the actual costs incurred by it in the sending of its personnel to assist in the start-up of a PPG manufacturing plant pursuant to Section 6.02. For purposes of this Section 6.03, "actual costs" means the reasonable amounts actually expended by Great Lakes for transporting, lodging, and feeding its engineers, together with a liquidated charge on account of salaries, of $250 per man per day, escalated by the fraction CPR - CPO, where CPO is the All Urban Consumer Index (to the base year 1967 = 100) most recently published prior to the date hereof, and CPR is the value of the same index most recently published prior to the time the services are rendered.

6.04 *Further Assistance.* For a period of not more than one hundred eighty (180) days after start-up of any plant referred to in Section 6.02, provided such start-up shall have occurred within four (4) years after the Request Date, Great Lakes shall, at no charge to PPG, furnish PPG with such additional information as may reasonably be requested by PPG in order to give full effect of the intentions of the parties and the purposes of this Agreement: provided, however, that Great Lakes shall not be obligated to disclose (i) any information relating to a Group A Product, if such information is not included in that Product Technology which Great Lakes is obligated to furnish PPG pursuant to Section 2.03 for such Product practiced on the date of this Agreement, or (ii) any information relating to a Group B Product for which Great Lakes has furnished Product Technology pursuant to Section 3.03, if such information is not included in the Product Technology for such Product as it existed on July 15, 1981, or (iii) any information relating to a Group B Product for which Great Lakes has furnished Product Technology pursuant to Section 3.04, if such information is not included in the Product Technology for such Product practiced on July 15, 1983, or (iv) any information relating to [one of the Group A Products] which was not acquired from Velsicol Chemical Corporation by Great Lakes on July 15, 1981.

VII.

Technology

7.01 *Infringement.* If PPG should become aware of any infringement by a third person of any claim of any patent application or registration licensed or agreed to be licensed by Great Lakes hereunder, it shall notify Great Lakes and Great Lakes shall have the right, at its expense, to prosecute such infringement. If, within thirty (30) days after the date of such notice, Great Lakes has failed to commence prosecution of any such infringement, PPG shall be entitled by itself, at its own expense, to institute and prosecute, in the name (and with the approval) of Great Lakes, such proceedings as PPG may reasonably deem appropriate.

7.02 *Warranties.* Great Lakes hereby warrants and represents that:

a. The technology as used by Great Lakes on the date of this Agreement enables Great Lakes to manufacture such Product in accordance with the specifications set out in Schedule A annexed hereto;

b. All Product Technology, except that respecting [one of the Group A Products,] disclosed to PPG pursuant to Section 2.03 will be the entire technology practiced by Great Lakes on the date of this Agreement or on the date of the request, as the case may be;

c. All Product Technology disclosed to PPG under Section 3.03 will be the entire technology as it existed on July 15, 1981;

d. All Product Technology disclosed to PPG under Section 3.04 will be the entire technology as actually practiced by Great Lakes on the date of this Agreement or the date of the request, as the case may be; provided, that the technology for [one of the Group B Products] shall be that acquired from Velsicol Chemical Corporation on July 15, 1981, as subsequently improved by Great Lakes, and practiced by it on the date of this Agreement or the date of the request, as the case may be.

VIII.

Confidentiality

8.01 *Reciprocal Obligation.* Each of the parties hereby agrees with the other that it will keep confidential all Product Technology expressly stated to be confidential which is disclosed to it by the other hereunder or observed by it in the performance of the provisions of Article VI, except to the extent that Product Technology (i) is disclosed by PPG to one of its employees (so long as such) disclosure is necessary for the performance of employment duties and so long as such employee is obligated to treat Product Technology so disclosed in the same manner as confidential and proprietary information of PPG, a bona fide architectural or engineering consultant or building contractor performing services for PPG (so long as such disclosure is necessary for the performance of such consulting or contracting duties and then only so long as such consultant or contractor first executes a written agreement corresponding to that made by PPG under this Section 8.01), or a subsidiary of PPG which is permitted to use and practice the Product Technology under the terms of the proviso to Section 4.03, (ii) is or becomes publicly known, (iii) is received by the party from a third person entitled to disclose the same, (iv) is known to the party prior to disclosure, or (v) is required to be disclosed by law or order of a court or other competent government agency. As so limited, the obligations of the parties under this Section 8.01 shall terminate January 1, 1994.

IX.

Other Velsicol Products

9.01 *Disclosure.* Upon request of PPG at any time within two (2) years following the date of this Agreement, and upon payment by PPG to Great Lakes of a fee of Ten Thousand Dollars ($10,000.00), Great Lakes will conduct a one or two day seminar for not more than ten (10) employees and representatives of PPG, at which knowledgeable Great Lakes employees will give a verbal explanation of the technology of all brominated products which it acquired from Velsicol Chemical Corporation in 1981 other than Group A and Group B Products. The seminar will be held in West Lafayette, Indiana. The travel expenses incurred by PPG's employees and representatives will be borne by PPG. Each of PPG's employees and representatives will be required to execute a confidentiality agreement relating to the technology to be disclosed at said seminar.

9.02 *Negotiation for License.* Upon request of PPG at any time within one (1) year following the date of the seminar referred to in Section 9.01, Great Lakes will enter into negotiation of a non-exclusive license to use any part of the technology discussed at said seminar in which PPG has an interest, and will bargain in good faith to arrive at a mutually acceptable license agreement.

X.

General Provisions

10.01 *Maintenance of Records.* PPG shall, and shall cause those assignees and sublicensees permitted hereunder, to maintain accurate and complete records relating to the manufacture and sale of Products using Product Technology. Such records shall be adequate to permit royalties to be readily computed in accordance with Article V. PPG agrees, at the request of Great Lakes, to permit an independent certified public accountant selected by Great Lakes, except one to whom PPG has some reasonable objection, to have access during ordinary business hours to such records as may be necessary (a) to determine in respect to any calendar quarter year, ending not more than two (2) calendar years prior to the date of such request, the correctness of any report or payment made under this Agreement, or (b) to obtain information as to the royalties payable for any such period in case of failure of PPG to report or pay pursuant to the terms of this Agreement. Such accountant shall not disclose to Great Lakes any information relating to the business of PPG, except that which should properly have been contained in any report hereunder.

10.02 *Governing Law.* This Agreement is made in the State of Indiana, and all questions relating to its validity, construction, and enforcement shall be governed by the law of that State.

10.03 *Amendment.* No amendment of, or addition to, this Agreement will be binding upon either party hereto unless it has been reduced to writing and duly executed by both parties.

10.04 *Prohibition Against Assignment.* Prior to the expiration of the Product Technology Conditional License Term for each Product for which Product Technology has been furnished pursuant to Articles II and III, the rights to the Product Technology for each such Product created under this Agreement may not be assigned by PPG except to a single business entity which is one of the following: (a) a domestic U.S. entity in which PPG possesses more than fifty percent (50%) of both the equity and the voting control; or (b) a corporation growing out of or surviving a consolidation or acquisition by or merger with PPG; or (c) a non-U.S. entity in which PPG possesses of both the equity and the voting control the lesser of forty percent (40%) or the maximum permitted by the laws of the foreign jurisdiction; or (d) a successor or purchaser of the entire brominated flame retardant chemicals business of PPG. After the expiration of the

Product Technology Conditional License Term for each Product for which Product Technology has been furnished pursuant to Articles II and III, the rights to the Product Technology for each such Product created under this Agreement may be assigned to any entity that accepts the remaining obligations, if any, to maintain records and pay royalties pursuant to section 10.01 and Article V, respectively.

10.05 *More Favorable Grant.* In the event Great Lakes shall grant another rights and licenses respecting any Product for which PPG has elected under Section 2.03, 3.02, 3.03, or 3.04 to obtain Product Technology under financial terms (including payments and royalties) less than those imposed upon PPG under this Agreement, Great Lakes shall forthwith offer PPG such financial terms with respect to each and every such Product.

10.06 *Waiver.* The waiver, express or implied, by either party of any right hereunder or of any breach by the other party will not be deemed a waiver of any other right or breach, either of a similar or dissimilar nature.

10.07 *Complete Agreement.* This Agreement supersedes all other communications between the parties regarding, and constitutes their sole and exclusive agreement with respect to, the subject matter of this Agreement.

10.08 *Effective Date.* References herein to "the date of this Agreement" and similar references shall be construed for all purposes as references to the effective date of this Agreement. The effective date of this Agreement shall be the date it becomes effective pursuant to the terms of a certain Memorandum Agreement of even date.

MADE on the date first above written.

GREAT LAKES CHEMICAL CORPORATION

by: ______________________________

PPG INDUSTRIES, INC.

by: ______________________________

SCHEDULE A

PRODUCT SPECIFICATIONS

All percentages by weight unless otherwise stated

PH–73

Assay	99.5%	min.
HBr	0.3%	max.
H_2O	0.5%	max.
Melting Point	92°	C
APHA Sol. Color (MeOH)	200	max.
Sol. Color (MeCl)	200	max.
Sol. Color (NaOH)	300	max.
Appearance	Light tan	cream to flake
Dibromophenol	0.5%	max.

FF–680

Appearance	Off-white to light tan
Odor	Characteristic

Br	68.5% min.
NaBr	0.5% max.
H_2O	0.15% max.
Color Gardner "L"	88 min.
Loss on Drying	0.3% max.
Melting Point	223°C min.

PHT4

Appearance	Free flowing light tan powder
APHA color	100 max.
Neutral equiv.	228 min.
Sulphate	0.3% max.
Melting Point	270°C min.
Moisture	0.4% max.

FM-100

Melting Point	185°-195°C
Br	72% min.
Volatiles	1.0% max.
APHA Color	60 max.
Solubility in styrene	5%
Sieve through #60	80% min.
Sieve through #100	45% min.

PHT4-Diol

Acid No.	0.25 max.
APHA Color	Visual pass/fail
H_2O	.20% max.
Hydroxyl No.	200-235
Br	43.2% min.
Viscosity	80-100 Cps (target)
Diethylene glycol	8.5% max. (target)

PO-64P

Volatiles	1.0% max.
Br	63%-65.5%
NaBr	.15% max.
Melting Range	210°-240°C
Tribromophenol	.15% max.
Alkalinity	.01 m.eq.

ATTACHMENT B

PPG - GREAT LAKES

Third Supplemental Agreement

Made the 16th day of September, 1983, between PPG INDUSTRIES, INC., a Pennsylvania corporation ("PPG"); and GREAT LAKES CHEMICAL CORPORATION, a Delaware corporation ("Great Lakes").

Whereas, PPG is the successor by merger to Houston Chemical Corporation, a Texas corporation ("Houston"); and Great Lakes is the successor by merger to Great Lakes Chemical Corporation, a Michigan corporation ("Great Lakes - Michigan"); and as such successors PPG and Great Lakes are seized, possessed, and entitled to all the rights, titles, benefits, and interests, and are bound by and limited to the obligations, limitations, and covenants, of Houston and Great Lakes - Michigan, respectively, in the following listed written contracts, viz:

A. Uncaptioned, dated July 19, 1960, between Houston and Great Lakes - Michigan;

B. Houston - Great Lakes Supplemental Agreement, dated July 28, 1964, between Houston and Great Lakes - Michigan;

C. Houston - Great Lakes Second Supplemental Agreement, dated March 21, 1968, between Houston and Great Lakes - Michigan;

D. Arkansas - Great Lakes Bromine Sales Agreement, dated July 31, 1964, between Arkansas Chemicals, Inc. (hereinafter "ACI") and Great Lakes - Michigan.

E. Arkansas - Houston Bromine Sales Agreement, dated July 31, 1964, between ACI and Houston;

F. Amendment and Extension of Arkansas - Great Lakes Bromine Sales agreement, dated March 21, 1968, between ACI and Great Lakes - Michigan; and

G. Amendment and Extension of Arkansas - Houston Bromine Sales Agreement, dated March 21, 1968, between ACI and Houston; and

Whereas, PPG and Great Lakes wish to further amend and change the said contracts between themselves and with ACI in certain particulars;

Now, therefore, in consideration of the premises and of the covenants set forth below the parties do covenant and agree as follows:

1. Effective as of the date of this Third Supplemental Agreement, the parties hereby amend the prior agreements between them as follows:

a. From the first sentence of Section 2 of the uncaptioned agreement of July 19, 1960 (item A above) the last fifteen (15) words are deleted.

b. The words "and the identity of the proposed purchaser" shall be inserted immediately following the words "including the number of shares involved" in the first sentence of paragraph (c) of section 8 of the said agreement of July 19, 1960 (item A above).

c. The words "and with the proposed purchaser" shall be inserted immediately after the word "shares" and before the word "set" in the second sentence of paragraph (c) of section 8 of the said agreement of July 19, 1960 (item A above).

d. Section 2 of the Supplemental Agreement of July 28, 1964 (item B above) is deleted in its entirety.

e. Section 2 of the Second Supplemental Agreement of March 21, 1968 (item C above) is deleted in its entirety.

2. Great Lakes will sign and deliver to ACI, and the parties will cause ACI to sign and deliver to Great Lakes, an agreement in the words and form attached hereto as Appendix 1.

3. PPG will sign and deliver to ACI, and the parties will cause ACI to sign and deliver to PPG, an agreement in the words and form attached hereto as Appendix 2.

4. To the extent that from facilities in place at ACI's plant on the date of this Third Supplemental Agreement, in the condition in which they then are or may be put without capital expenditures, and from facilities installed or improved by capital expenditures funded by contributions from the parties hereto, proportionate to the then relative equity interest in ACI of each of the parties hereto, up to an actual bromine production capacity of [the approximate nameplate capacity in pounds] per annum of mutually funded capacity, the bromine produced by ACI shall be allocated to Great Lakes and PPG pursuant to the provisions of the Bromine Sales Agreements between ACI and Great Lakes, and ACI and PPG, in the forms attached hereto, respectively, as Appendices 1 and 2. With respect to all mutually funded expansion of ACI's actual

bromine production capacity above [the approximate nameplate capacity in pounds] of mutually funded capacity, each party shall in each calendar year have a call upon and right to the said excess (above [the approximate nameplate capacity in pounds]) proportioned to its relative equity interest in ACI; provided, however, the foregoing shall not include or cover any actual bromine production capacity resulting from facilities installed or improved by capital expenditures funded after the execution of this Third Supplemental Agreement by contributions from only one of the parties hereto under Section 5 hereof. All of the additional bromine resulting from a unilaterally funded expansion in ACI's actual bromine production capacity will be made available to and for the sole contributing party, unless otherwise mutually agreed to in writing by such contributing party and ACI, notwithstanding any provision herewith contained in the aforementioned ACI agreements with Great Lakes and PPG. The parties will cause the said agreements to be administered (and if necessary, amended when appropriate) to give full effect to the intentions of the parties in this Section 4.

5. (a) If, in order to maintain or increase the actual bromine production ability of ACI, a party wishes ACI to make a capital expenditure for the improvement of existing facilities or for the construction or other acquisition of additional facilities; but the other party (upon written request from the first) does not in writing agree within 20 business days with respect to a total funding of $125,000 or less, or within 30 business days with respect to a total of $500,000 or less, or within 50 business days with respect to all other fundings to contribute a share, proportionate to its then relative equity interest, of the capital contributions necessary to fund such improvements, construction, or acquisition; then the instigating party may make the necessary or appropriate capital contribution to ACI, and the declining party shall as a shareholder cooperate with the instigating party in taking such actions and in causing ACI directors to take such action as may be appropriate to have the improvements, constructions, or acquisitions so funded to be made and done. Upon the making of such capital contributions, the equity interest of the contributing party shall be increased by the issuance to the contributing party of additional shares of the contributing party's class of stock of ACI reflective of the amount of contribution, the amount of such additional stock to be issued ("Later Shares") being equal to $C \times TS \div SE$, wherein C means the amount of the contribution, SE means the aggregate shareholder equity (the difference between total assets and total liabilities) in ACI as of the date of contribution excluding consideration of the subject contribution, and TS means the total shares of ACI authorized and issued as of the date of contribution. The following hypothesis will illustrate the intended application of this section:

(b) If any asset purchased by a capital contribution for which Later Shares were issued is destroyed or otherwise damaged so as to be rendered useless and such asset is not subsequently replaced or repaired, any insurance proceeds obtained therefor as well as any salvage value of such asset shall be applied by ACI to the repurchase by ACI of Later Shares which were issued for such asset. The number of Later Shares to be so repurchased shall be determined based upon the value which had been originally computed pursuant to subsection 5(a) above for each Later Share pertaining to such asset. The parties hereto as shareholders of ACI shall take such actions to cause ACI directors to take such actions as may be required and appropriate to repurchase such Later Shares.

6. (a) If at any time prior to the ninth (9th) anniversary of the date hereof, a notice is given by PPG to Great Lakes pursuant to Section 8(c) of the uncaptioned agreement of July 19, 1960 between Houston Chemical Corporation, a Texas corporation, and Great Lakes Chemical Corporation, a Michigan corporation, Great Lakes may elect either to exercise its rights of first refusal as stated in said section 8(c) or to purchase the shares referred to in such notice at a price computed in accordance with subsection 6(b) below; provided, that Great Lakes right and PPG's obligation to consummate such

a purchase because of such an election shall be subject to and conditioned upon Great Lakes obtaining within the time specified in Section 6(c) below Federal Trade Commission approval for the acquisition.

(b)(i) It shall conclusively be deemed that the first five thousand shares of ACI capital stock transferred by PPG, whether to Great Lakes or a third party, are those five thousand shares owned by PPG at the time of the execution of this Agreement. These shares are hereinafter referred to as "Original Shares". All shares transferred by PPG after it has transferred five thousand shares shall be conclusively deemed not to be Original Shares; and they are hereinafter referred to as "Later Shares". The total purchase price paid by Great Lakes for shares transferred to it shall be the sum of two increments; the first increment being the total incremental price for all transferred Original Shares (if any) and the second increment being the total incremental price for all transferred Later Shares (if any).

(ii) The incremental price for each Original Share shall be equal to [a value based upon a negotiated formula.]

(iii) The incremental price of each Later Share shall be equal to [a value based upon a negotiated formula.]

(c) The parties understand that, pursuant to the 10 year ban provision contained in the Consent Order in FTC Docket 9155, any purchase of PPG's interest in ACI by Great Lakes within ten years of the final Commission order must first be approved by the Federal Trade Commission, and that the Federal Trade Commission has not, by incorporating this Agreement in its Consent Order, either expressly or implicitly approved or indicated that it would approve any such transaction. The parties therefore agree that the closing of any proposed sale of PPG's interest in ACI to Great Lakes shall be deferred as long as required (but not more than 135 days) to obtain such Federal Trade Commission or any other necessary governmental approval. If the Federal Trade Commission disapproves the proposed sale of PPG's interest in ACI to Great Lakes or if the Federal Trade Commission or other necessary approval cannot be obtained within 135 days, then for a period of one (1) year from the date of the Federal Trade Commission disapproval or the expiration of the 135 day period, whichever is earlier, it shall be conclusively deemed that Great Lakes has waived all rights under said Section 8(c) and this Section 6 and that PPG shall be free to sell its interest in ACI to any party. Despite the expiration of a one year waiver with respect to any proposed sale, the provisions of this Section 6 shall remain in effect with respect to a possible future sale of PPG's interest in ACI.

(d) All rights and obligations of PPG as a shareholder in ACI, including but not limited to all obligations assumed on behalf of ACI as a guarantor, shall terminate upon the closing if as a result of the closing PPG owns no more ACI stock. If necessary to give effect to the termination of such obligations, Great Lakes shall assume any obligation undertaken with the prior knowledge and approval of Great Lakes.

7. The uncaptioned agreement of July 19, 1960, the Supplemental Agreement, the Second Supplemental Agreement (the foregoing being items A, B, and C above) and this Third Supplemental Agreement shall hereafter be construed and enforced according to the laws of the State of Arkansas.

8. References herein to "the date of this Agreement" and similar references shall be construed as references to the effective date of this Agreement. The effective date of this Agreement shall be the date it becomes effective pursuant to the terms of a certain Memorandum Agreement of even date.

PPG INDUSTRIES, INC.

By ____________________

GREAT LAKES CHEMICAL CORPORATION

By ____________________

APPENDIX 1

to

ATTACHMENT B

BROMINE SALES AGREEMENT

between

GREAT LAKES CHEMICAL CORPORATION

and

ARKANSAS CHEMICALS, INC.

Made the 16th day of September 1983, by and between ARKANSAS CHEMICALS, INC., a Delaware corporation, herein called Seller; and GREAT LAKES CHEMICAL CORPORATION, a Delaware corporation, herein called Buyer.

1. That certain contract dated July 31, 1964, between Arkansas Chemicals, Inc. and Great Lakes Chemical Corporation (a Michigan corporation) captioned *Arkansas - Great Lakes Bromine Sales Agreement* and that certain contract dated March 21, 1968, between the same parties, captioned *Amendment and Extension of Arkansas - Great Lakes Bromine Sales Agreement* are hereby terminated, and shall have no force, effect, or application to sales of bromine not delivered prior to the date of this Agreement.

2. This Agreement shall continue until December 31, 1993, and continue thereafter unless and until terminated by either party by not less than 24 full calendar months prior written notice of termination given by either party to the other, provided, however, such notice of termination may not be given prior to December 31, 1991.

3. (a) Except as it may be limited by its ability to produce bromine and by its commitment to sell bromine to PPG Industries, Inc. ("PPG"), Seller will sell and deliver to Buyer all bromine ordered from it by Buyer. Buyer will purchase, accept, and pay for not less than [an economical amount] of bromine in each calendar year (or, in the first and last partial calendar years of this Agreement, the proportionate fraction of such quantity) for the price and upon the terms and conditions herein set forth; provided, that Buyer's obligation to purchase in any one year shall be reduced to the extent that in the same year Seller sells bromine to another customer other than PPG.

(b) For the limited purchase of application of the rights set forth in this subsection 3(b) and not for the purposes of pricing bromine to be sold under this Agreement, Seller shall during each December and June during the term hereof calculate a *pro forma* price per pound of bromine (i) based on a projected maximum operating capacity of Seller for the next twelve (12) months, and (ii) which would yield for such twelve (12) months a pretax return [at a negotiated rate sufficient to provide bromine at an economical cost.] The parties agree that for the first twelve (12) months of this Agreement Seller's maximum operating capacity shall be conclusively presumed to be not less than [an economical amount] annually. If the *pro forma* price per pound so calculated by Seller is greater than Buyer's volume weighted average price for bromine sold in bulk by Buyer F.O.B. El Dorado, Arkansas during the preceding two (2) calendar months. Buyer shall have the right exerciseable by written notice to Seller within the thirty (30) days after the calculated *pro forma* price has been communicated to Buyer to terminate its purchase obligations under this Agreement effective the date of Buyer's notice. In calculating Buyer's volume weighted average price, sales by Buyer to any of its subsidiaries and sales by Buyer to any other party for which part of the consideration is a return of a by-product generated by the use of the bromine so sold

shall be disregarded. Buyer agrees that in its capacity as manager of Seller it will not commit an act or omission designed or calculated to lower the operating capacity of Seller for the purpose of bringing into effect the provisions of this subsection 3(b). In the event Buyer elects to terminate its purchase obligations under this Agreement pursuant to its rights under this subsection 3(b), Buyer will promptly initiate and take such action and cause its directors on Seller's Board to take such action to accomplish the liquidation and dissolution of Seller as soon as possible after the termination of Buyer's purchase obligation under this Agreement. It is understood and agreed by Buyer that if it can, but does not, exercise its right to terminate its purchase obligations under this Agreement as provided for in this subsection 3(b), Buyer shall remain obligated thereafter to purchase the quantities required under this Agreement, unless and until it may exercise a subsequent right of termination under this subsection 3(b).

(c) If PPG properly files a valid petition with the Court of Chancery of Delaware pursuant to section 273 of the Delaware Corporation Law, and if at the time of filing Buyer is in breach of its obligation under subsection 3(a) above, or if Buyer has failed in any period of six (6) consecutive months to purchase one half of its annual obligation under section 3(a) pertinent to those months and has not cured that default within sixty (60) days after PPG by written notice calls upon Buyer to cure the default, then Buyer shall and does hereby waive the periods of three (3) months and one year referred to in subsection (b) of said section 273, and shall and does hereby consent that proceedings of dissolution may go forward as if such periods had expired.

4. Seller shall ship the bromine in liquid form by tank truck or tank car as specified by Buyer from time to time; and Seller shall deliver the bromine to Buyer's continental U.S. plants or to Buyer's customers at places in the continental U.S. designated by Buyer from time to time. Freight will be charged to Buyer's account. Buyer will aid and facilitate unloading of the bromine promptly upon its arrival at the plant of Buyer or its designated customer. If in any month during the term hereof Seller's tank car and tank truck fleet is not sufficient to deliver the combined quantities of bromine ordered by Buyer and PPG for delivery in that month, and Seller is unable to lease sufficient additional equipment, Seller shall allocate the fleet capacity in such a way as to endeavor to make deliveries of the quantities ordered by Buyer and PPG, respectively, in a ratio which is the greater of: ONE - the ratio of deliveried to them in the next preceding 12 calendar months; or TWO - [a negotiated ratio.]

5. For each sale of bromine hereunder Seller shall invoice a preliminary net price per pound F.O.B. Seller's plant equal to Seller's best estimate for the then current calendar year of the price necessary to yield for that year a pretax return [at a negotiated rate sufficient to provide bromine at an economical cost] during such year. As soon as practicable after the end of the calendar year Seller shall calculate the net price per pound it should have charged for all bromine sold to Buyer and PPG in that year in order to achieve the said pretax return; and will either refund the excess charges to Buyer if the calculated price is less than the actual charges, or invoice Buyer for the appropriate additional amount, if the calculated price is greater than the actual charges. Buyer will pay all invoices within 30 days of the date thereof.

6. Not later than October of each year Buyer shall give Seller in writing Buyer's best estimate of the total quantity of bromine Buyer will require in the ensuing calendar year. Not later than the 15th day of every calendar month, Buyer shall give Seller in writing Buyer's best estimate of its requirements in each of the ensuing three calendar months. While it will attempt to accept and fill all Buyer's orders, in no calendar month shall Seller be obligated to sell and deliver a quantity greater than the lesser of (i) 110% of the latest estimate for that month, or (ii) [a specified amount of bromine.]

7. If in any month during the term hereof the quantity of bromine which Seller has available out of production at Seller's plant for delivery to customers is less than the combined quantities that Buyer and PPG require to be delivered to them during such

month pursuant to this contract and a contract of even date herewith between Seller and PPG, Seller shall pro rate deliveries of the quantity so available between Buyer and PPG in a ratio which is the greater of: ONE - the ratio of delivered to them in the preceding 12 calendar months; or TWO - [a negotiated ratio.] To the extent that the bromine delivered by Seller in any one month to Buyer or for its account is less than Buyer's orders for that month, Buyer's purchase obligations under section 3 shall be reduced by the same amount.

8. The bromine sold and delivered by Seller to Buyer hereunder shall conform to the following specifications and standards of quality:

[Product Specification]

9. This Agreement may not be assigned except to (i) a business entity in which Buyer possesses more than fifty percent (50%) of both the equity and of the voting control, or (ii) to a corporation growing out of or surviving a consolidation or acquisition by or merger with Buyer, or (iii) to the purchaser of all Buyer's shares of the capital stock of Seller.

10. Seller shall warrant only that the bromine delivered to Buyer hereunder shall comply with specifications expressed in this contract. SELLER MAKES NO OTHER WARRANTIES; AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR THE INTENDED PURPOSE. Any claim relating to quantity, quality, weight, condition, loss or damage, of or to the bromine shipped hereunder, shall be conclusively deemed waived unless made within fifteen (15) business days after the arrival of the shipment at its intended destination. If Buyer rejects all or a part of a shipment hereunder, Seller shall have the right to cure any claimed defects by delivering conforming bromine within a reasonable time.

11. Nothing herein contained shall obligate Seller to increase its bromine production capacity nor to make any capital expenditures to maintain existing production capacity; and so long as Seller complies with the allocation provisions of section 7 hereof, a failure of Seller to deliver bromine which it would otherwise be obligated to deliver hereunder shall not be deemed a violation of this Agreement provided such failure results at least in part from limitations in Seller's ability to produce bromine. Seller's failure or inability to make, or Buyer's failure or inability to take, any delivery or deliveries when due, or the failure or inability of either party to effect timely performance of any other obligation required of it hereunder, if caused by force majeure as hereinafter defined, shall not constitute a default hereunder or subject the party affected by force majeure to any liability to the other; provided, however, the party so affected shall promptly notify the other of the existence thereof and of its expected duration and the estimated effect thereof upon its ability to perform its obligations hereunder. Such party shall promptly notify the other party when such force majeure circumstance has ceased to affect its ability to perform its obligations hereunder. The quantity to be delivered hereunder shall be reduced to the extent of the deliveries omitted for such cause or causes, unless both parties agree that the total quantity to be delivered hereunder shall remain unchanged. During the time that Seller is unable to make deliveries or otherwise perform, it shall not be obligated to procure, or to use its best efforts to procure, any quantity of product sold hereunder from any alternate producer or supplier. As used herein, the term "force majeure" shall mean and include any act of God, nature, or the public enemy, accident, explosion, operation malfunction or interruption, fire, storm, earthquake, flood, drought, perils of the sea, strikes, lockouts, labor disputes, riots, sabotage, embargo, war (whether or not declared and whether or not the United States is a participant), Federal, State, or Municipal legal restriction or limitation or compliance therewith, failure or delay of transportation, shortage of or inability to obtain raw materials, supplies, equipment, fuel, power, labor,

or other operational necessity, interruption or curtailment of power supply, or any other circumstance of a similar or different nature beyond the reasonable control of the party affected thereby including the loss, lack, failure, or damage to any of Buyer's plant, equipment or facilities. In this connection a party shall not be required to resolve labor disputes or disputes with suppliers of raw materials, supplies, equipment, fuel, or power, except in accordance with such party's business judgment as to its best interest.

12. Except in respect of Section 3(c) hereof, as used in this Agreement references to "PPG" shall mean the "Buyer" under Seller's Bromine Sales Agreement of even date with PPG Industries, Inc. This Agreement shall be construed and enforced in accordance with the law of Arkansas.

13. References herein to "the date of this Agreement" and similar references shall be construed as references to the effective date of this Agreement. The effective date of this Agreement shall be the date it becomes effective pursuant to the terms of a certain Memorandum Agreement of even date.

ARKANSAS CHEMICALS, INC. GREAT LAKES CHEMICAL CORPORATION

by ________________ by ________________

APPENDIX 2

to

ATTACHMENT B

BROMINE SALES AGREEMENT

between

PPG INDUSTRIES, INC.

and

ARKANSAS CHEMICALS, INC.

Made the 16th day of September 1983, by and between ARKANSAS CHEMICALS, INC., a Delaware corporation, herein called Seller; and PPG INDUSTRIES, INC., a Pennsylvania corporation, herein called Buyer.

1. That certain contract dated July 31, 1964, between Arkansas Chemicals, Inc., and Houston Chemical Corporation (a Texas corporation) captioned *Arkansas - Houston Bromine Sales Agreement* and that certain contract dated March 21, 1968, between the same parties, captioned *Amendment and Extension of Arkansas - Houston Bromine Sales Agreement* are hereby terminated, and shall have no force, effect, or application to sales of bromine not delivered prior to the date of this Agreement.

2. This Agreement shall continue until December 31, 1993, and continue thereafter unless and until terminated by either party by not less than 24 full calendar months prior written notice of termination given by either party to the other, provided, however, such notice of termination may not be given prior to December 31, 1991; provided, further, that Buyer's purchase obligations hereunder shall terminate forthwith upon termination of the purchase obligations of Great Lakes Chemical Corporation under its Bromine Sales Agreement with Seller of even date pursuant to subsection 3(b) of that Agreement. Buyer agrees to take action and cause its directors on Seller's Board to take action to cooperate with and join in the liquidation and dissolution of Seller referred to in said subsection 3(b) of said Bromine Sales Agreement between Seller and Great Lakes Chemical Corporation.

3. Seller will sell and deliver and Buyer will purchase, accept, and pay for all Buyer's requirements of bromine up to but not in excess of [a specified amount] of bromine in each calendar year (or, in the first and last partial calendar years of this Agreement, the proportionate fraction of such quantity) for the price and upon the terms and conditions herein set forth.

4. Seller shall ship the bromine in liquid form by tank truck or tank car as specified by Buyer from time to time; and Seller shall deliver the bromine to Buyer's continental U.S. plants or to Buyer's customers at places in the continental U.S. designated by Buyer from time to time. Freight will be charged to Buyer's account. Buyer will aid and facilitate unloading of the bromine promptly upon its arrival at the plant of Buyer or its designated customer. If in any month during the term hereof Seller's tank car and tank truck fleet is not sufficient to deliver the combined quantities of bromine ordered by Great Lakes Chemical Corporation ("Great Lakes") and Buyer for delivery in that month, and Seller is unable to lease sufficient additional equipment, Seller shall allocate the fleet capacity in such a way as to endeavor to make deliveries of the quantities ordered by Great Lakes and Buyer, respectively, in a ratio which is the greater of: ONE - the ratio of deliveries to them in the next preceding 12 calendar months; or TWO - [a negotiated ratio.]

5. For each sale of bromine hereunder Seller shall invoice a preliminary net price per pound F.O.B. Seller's plant equal to Seller's best estimate for the then current calendar year of the price necessary to yield for that year a pretax return [at a negotiated rate sufficient to provide bromine at an economical cost] during such year. As soon as practicable after the end of the calendar year Seller shall calculate the net price per pound it should have charged for all bromine sold to Buyer and Great Lakes in that year in order to achieve the said pretax return; and will either refund the excess charges to Buyer if the calculated price is less than the actual charges, or invoice Buyer for the appropriate additional amount, if the calculated price is greater than the actual charges. Buyer will pay all invoices within 30 days of the date thereof.

6. Not later than October of each year, Buyer shall give Seller in writing Buyer's best estimate of the total quantity of bromine Buyer will require in the ensuing calendar year. Not later than the 15th day of every calendar month, Buyer shall give Seller in writing Buyer's best estimate of its requirements in each of the ensuing three calendar months. While it will attempt to accept and fill all Buyer's orders, in no calendar month shall Seller be obligated to sell and deliver a quantity greater than the lesser of (a) 100% of the latest estimate for that month or (b) [a specified amount of bromine.]

7. If in any month during the term hereof the quantity of bromine which Seller has available out of production at Seller's plant for delivery to customers is less than the combined quantities that Great Lakes and Buyer require to be delivered to them during such month pursuant to this contract and a contract of even date herewith between Seller and Great Lakes, Seller shall prorate deliveries of the quantity so available between Great Lakes and Buyer in a ratio which is the greater of: ONE - the ratio of deliveries to them in the next preceding 12 calendar months; or TWO - [a negotiated ratio.]

8. The bromine sold and delivered by Seller to Buyer hereunder shall conform to the following specifications and standards of quality:

[Product Specification]

9. This Agreement may not be assigned except to (i) a business entity in which Buyer possesses more than fifty percent (50%) of both the equity and of the voting control, or (ii) to a corporation growing out of or surviving a consolidation or acquisition by or merger with Buyer, or (iii) to the purchaser of all Buyer's shares of the capital stock of Seller.

10. Seller shall warrant only that the bromine delivered to Buyer hereunder shall

comply with specifications expressed in this contract. SELLER MAKES NO OTHER WARRANTIES; AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR THE INTENDED PURPOSE. Any claim relating to quantity, quality, weight, condition, loss, or damage, of or to the bromine shipped hereunder, shall be conclusively deemed waived unless made within fifteen (15) business days after the arrival of the shipment at its intended destination. If Buyer rejects all or a part of a shipment hereunder. Seller shall have the right to cure any claimed defects by delivering conforming bromine within a reasonable time.

11. Nothing herein contained shall obligate Seller to increase its bromine production capacity nor to make any capital expenditures to maintain existing production capacity; and so long as Seller complies with the allocation provisions of Section 7 hereof, a failure of Seller to deliver bromine which it would otherwise be obligated to deliver hereunder shall not be deemed a violation of this Agreement provided such failure results at least in part from limitations in Seller's ability to produce bromine. Seller's failure or inability to make, or Buyer's failure or inability to take, any delivery or deliveries when due, or the failure or inability of either party to effect timely performance of any other obligation required of it hereunder, if caused by "force majeure" as hereinafter defined, shall not constitute a default hereunder or subject the party affected by force majeure to any liability to the other; provided, however, the party so affected shall promptly notify the other of the existence thereof and of its expected duration and the estimated effect thereof upon its ability to perform its obligations hereunder. Such party shall promptly notify the other party when such force majeure circumstance has ceased to affect its ability to perform its obligations hereunder. The quantity to be delivered hereunder shall be reduced to the extent of the deliveries omitted for such cause or causes, unless both parties agree that the total quantity to be delivered hereunder shall remain unchanged. During the time that Seller is unable to make deliveries or otherwise perform, it shall not be obligated to procure, or to use its best efforts to procure, any quantity of product sold hereunder from any alternate producer or supplier. As used herein, the term "force majeure" shall mean and include any act of God, nature or the public enemy, accident, explosion, operation malfunction or interruption, fire, storm, earthquake, flood, drought, perils of the sea, strikes, lockouts, labor disputes, riots, sabotage, embargo, war (whether or not declared and whether or not the United States is a participant), Federal, State or Municipal legal restriction or limitation or compliance therewith, failure or delay of transportation, shortage of, or inability to obtain raw materials, supplies, equipment, fuel, power, labor, or other operational necessity, interruption or curtailment of power supply, or any other circumstance of a similar or different nature beyond the reasonable control of the party affected thereby including the loss, lack, failure, or damage of any of Buyer's plant, equipment or facilities. In this connection a party shall not be required to resolve labor disputes or disputes with suppliers of raw materials, supplies, equipment, fuel, or power, except in accordance with such party's business judgment as to its best interest.

12. As used in this Agreement references to "Great Lakes" shall mean the "Buyer" under Seller's Bromine Sales Agreement of even date with Great Lakes Chemical Corporation. This Agreement shall be construed and enforced in accordance with the law of Arkansas.

13. References herein to "the date of this Agreement" and similar references shall be construed as references to the effective date of this Agreement. The effective date of this Agreement shall be the date it becomes effective pursuant to the terms of a certain Memorandum Agreement of even date.

ARKANSAS CHEMICALS, INC.

By ______________________________

PPG INDUSTRIES, INC.

By ______________________________

AMENDED MEMORANDUM AGREEMENT

Amended Memorandum Agreement made this February 1, 1984, between GREAT LAKES CHEMICAL CORPORATION and PPG INDUSTRIES, INC.

Recitals

A. Great Lakes Chemical Corporation ("Great Lakes") is one of the respondents in an Administrative Complaint being prosecuted by the Federal Trade Commission staff before an Administrative Law Judge employed by the Commission. In that proceeding, the Commission Staff is contesting the legality of Great Lakes' acquisition of certain assets from Velsicol Chemical Corporation on July 15, 1981.

B. Great Lakes and the Commission staff have had, and will in all likelihood continue to have, discussions looking to a voluntary settlement of the Administrative Complaint.

C. Great Lakes and PPG Industries, Inc. ("PPG") have entered into the following agreements, each of which is legally binding on the parties on the date on which they are signed by Great Lakes and PPG and each of which is dated the date hereof. They are collectively referred to herein as the "Agreements":

i. A production technology disclosure and licensing Agreement (Attachment A to the proposed Consent Order in the above referenced proceeding);

ii. A Third Supplemental Agreement between Great Lakes and PPG with respect to the operation of Arkansas Chemicals, Inc., being Attachment B to said proposed Consent Order (which includes a Bromine Sales Agreement between Great Lakes and Arkansas Chemicals, Inc. as Appendix 1 and a Bromine Sales Agreement between PPG and Arkansas Chemicals, Inc., as Appendix 2).

D. The Agreements, and the transactions contemplated thereby, constitute an element in the settlement which Great Lakes will propose to the Commission staff.

E. The parties hereto entered into a Memorandum Agreement on September 16, 1983, which they desire to amend by this Amended Memorandum Agreement, said amendments relating only to the term of this Amended Memorandum Agreement.

It is therefore agreed:

1. In the event that, on or before [a specified date] the Federal Trade Commission shall have issued final approval under Section 3.25(f) of the Commission's Rules of Practice to the proposed settlement of the Administrative Complaint presently pending against Great Lakes before the Commission, without requiring a hearing or trial thereof, of which proposed settlement the Agreements are a part, the said Agreements shall become effective as of the date of such approval, and the parties shall proceed to perform their respective obligations thereunder.

2. In the event that the Federal Trade Commission shall not have issued said final approval on or before [a specified date] each of the Agreements shall be null and void *ab initio*.

3. Great Lakes shall forthwith notify PPG in writing of the Commission's acceptance or rejection of the proposed settlement.

4. Until the earlier of a [specified date] or the approval or rejection by the Federal Trade Commission of the proposed settlement, neither Great Lakes nor PPG shall take any action which would substantially interfere with or render impossible its ability to

perform the obligations to be performed by it under the Agreements.

GREAT LAKES CHEMICAL CORPORATION

by ______________________________

PPG INDUSTRIES, INC.

by ______________________________