

Complaint

88 F.T.C.

IN THE MATTER OF  
MEDICAL SERVICE CORPORATION OF SPOKANE  
COUNTY, ET AL.

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

*Docket C-2853. Complaint, Dec. 3, 1976 — Decision, Dec. 3, 1976*

Consent order requiring a Spokane, Wash., operator of a "Blue Shield" health care payment plan and an association of participating physicians, among other things, to cease boycotting health maintenance organizations (HMO's), HMO physicians or other physicians who practice on other than a fee-for-service basis.

*Appearances*

For the Commission: *Jonathan E. Gaines* and *Selig S. Merber*.

For the respondents: *Arthur W. Harrigan, Jr., Lane, Powell, Moss & Miller*, Seattle, Wash.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have violated and are violating the provisions of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45), and that a proceeding by it in respect thereof would be in the interest of the public, hereby issues this complaint, stating its charges as follows:

RESPONDENTS

PARAGRAPH 1. Medical Service Corporation of Spokane County (hereinafter "MSC") is a corporation organized and existing under the laws of the State of Washington, with its principal offices in Spokane, Washington.

PAR. 2. Medical Service Bureau of Spokane County (hereinafter "MSB") is an unincorporated association of physicians. Except as hereinafter alleged, membership in MSB is open to all members of the medical societies of Adams, Benton, Douglas, Ferry, Franklin, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, and Stevens Counties of the State of Washington (hereinafter "Eastern Washington"). Over 300 physicians, constituting over 90 percent of all physicians in Eastern Washington, are members of MSB.

TRADE AND COMMERCE

PAR. 3. In Eastern Washington, physicians are compensated for

services on either a fee-for-service basis or a prepayment basis. Health care plans which compensate physicians by the prepayment method are known as health maintenance organizations (hereinafter "HMO's"). In 1975, approximately \$15 million of paid physician services were rendered in Eastern Washington. Over 95 percent of such services were supplied on a fee-for-service basis.

PAR 4. Except to the extent that competition has been restrained as herein alleged, physicians providing services on a fee-for-service basis are in competition with each other and with HMO's in the provision of physician services.

PAR. 5. MSC is engaged in the business of establishing and administering plans pursuant to which it contracts with physicians rendering services on a fee-for-service basis to provide such services to consumers who subscribe to the plan. Physicians who enter into such contracts are known as participating physicians. MSC's contracts with subscribers and participating physicians usually provide that MSC will reimburse participating physicians for covered services rendered to subscribers and that such reimbursement will constitute payment in full of the participating physicians' fees for such services. Most MSC contracts with subscribers apply, with minor exceptions, only to services rendered by participating physicians.

PAR. 6. At least 25 percent of the population of Eastern Washington subscribes to an MSC plan. Over 90 percent of all practicing physicians in Eastern Washington are participating physicians in MSC. MSC is the only entity in Eastern Washington which is affiliated with National Association of Blue Shield Plans and offers consumers health benefit plans utilizing participating physicians. Physicians value the status of participating physicians and are disadvantaged by deprivation of such status.

#### JURISDICTION

PAR 7. Substantial Federal government funds flow across State lines into Eastern Washington to pay physicians' fees and encourage the development of HMO's. In the conduct of their business, MSB and MSC, collectively and severally, engage, *inter alia*, in the following activities which could also be engaged in by HMO's:

(a) receiving, treating, and contracting for the treatment of patients from other States and countries;

(b) receiving and administering substantial sums of money from the Federal government and from private insurers engaged in interstate commerce to pay physician fees;

(c) paying out substantial sums of money across State lines to health

care providers or plans which have rendered or paid for services to MSC subscribers, which services MSC is obligated to pay for;

- (d) investing claim reserves in the interstate money market;
- (e) participating in reciprocal arrangements for the provision of medical care to subscribers of medical care plans throughout the country which belong to the National Association of Blue Shield Plans, in the course of which MSC sends and receives substantial sums of money across State lines;
- (f) prescribing medicines which are shipped in interstate commerce.

#### ACTS AND PRACTICES

PAR. 8. MSC and MSB have individually, collectively and collusively engaged in the following acts, practices, and methods of competition for the purpose, and with the effect, of boycotting HMO's and physicians providing services to or for HMO's.

(a) Since its formation in 1933, MSC has followed the practice of:

- (i) entering into provider contracts only with physicians who are or could be members of MSB;
- (ii) refusing to enter into provider contracts with physicians who enter into similar contracts with other persons or organizations.

(b) From its formation in 1933 until in or about October 1974, MSB has followed the practice of:

- (i) refusing membership to any physician who agrees to provide services to or for an HMO; and
- (ii) permitting its members to become participating physicians only in MSC.

(c) Since in or about October 1974, MSB has provided in its By-Laws that:

- (i) membership would be granted to physicians who have contracted to provide services to an HMO only if the HMO is approved by MSB; and
- (ii) members are permitted to become participating physicians for organizations other than MSC only if such organizations are approved by MSB.

PAR. 9. In Eastern Washington, as a result of the acts, practices, and methods of competition alleged in paragraphs one through eight hereinabove,

- (a) the prices of physician services have been stabilized and otherwise interfered with;
- (b) competition among physicians has been restrained;
- (c) entry of HMO's into the physician services market and the growth of HMO's have been restrained;

(d) the development of organizations offering health benefit plans utilizing participating physician contracts has been restrained; and

(e) consumers have been deprived of the benefits of competition among physicians, fee-for-service medical care plans, and physician prepayment medical care plans.

#### VIOLATION

Par. 10. The acts, practices, and methods of competition alleged herein individually and in conjunction with each other, constitute unfair methods of competition or unfair acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act by the respondents herein, individually and collectively.

#### DECISION AND ORDER

The Federal Trade Commission having issued a complaint charging that the respondents named in the caption hereof have violated the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. §45; and

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

The Commission having thereafter 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 pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.32 of the Commission's Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Medical Service Corporation of Spokane County is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal place of business located at Spokane, Washington.

2. Medical Service Bureau of Spokane County is an unincorporated association with its principal place of business located at Spokane, Washington.

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

## ORDER

## I

*It is ordered,* That the following definitions shall apply in this order.

A. "MSB" means respondent Medical Service Bureau of Spokane County, its successors and assigns, its officers and directors, and all the members thereof as of January 1, 1976, individually and collectively.

B. "MSC" means respondent Medical Service Corporation of Spokane County, its successors and assigns, and its officers, directors, and members.

C. "Participating physician" means a physician who is paid or reimbursed by MSC for service rendered to an MSC subscriber or policyholder (including covered dependents), pursuant to a participating physician agreement with MSC.

D. "Health maintenance organization" means a health care payment plan which compensates physicians by a prepayment method, as opposed to the fee-for-service method.

## II

*It is further ordered,* That neither MSC nor MSB shall directly or indirectly enter into, adhere to, promote or follow any course of conduct, practice or policy, or any agreement or understanding which (a) discriminates against any health maintenance organization, or (b) discriminates against any lawfully practicing physician, or excludes any lawfully practicing physician from being a participating physician in MSC, by reason of the fact that such physician practices medicine, in whole or in part, on other than a fee-for-service basis, or by reason of the fact such physician is associated in any way with a health maintenance organization.

## III

*It is further ordered,* That within sixty (60) days following the date of issuance of this order MSC shall revise its Charter and By-Laws and MSB shall revise its By-Laws, to conform with the requirements of this order.

## IV

*It is further ordered,* That MSC shall mail a copy of this order and of the complaint in this proceeding to each trustee, member, and officer of MSC and to each person who was a member of MSB as of January 1, 1976.

V

*It is further ordered,* That nothing in this order shall be construed to exempt MSC or MSB from compliance with the antitrust laws or the Federal Trade Commission Act, and that the fact that any activity is not prohibited by this order shall not bar a challenge to it under such laws and statute.

VI

*It is further ordered,* That MSB and MSC shall, within sixty (60) days after service upon it of this order, and that MSC annually for each of the five (5) years thereafter, shall file or cause to be filed with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

VII

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

Order

88 F.T.C.

IN THE MATTER OF  
KRAFTCO CORPORATION, ET AL.

*Docket 9035. Interlocutory Order, Dec. 8, 1976*

Commission directs parties to submit memoranda responding to relative merits of ALJ's proposed order and the consent order in IBM case, File 761 0063.

*Appearances*

For the Commission: *Ronald A. Bloch, Clinton R. Batterton, and Joseph Tasker, Jr.*

For the respondents: *David C. Bogan and C. Lee Cook, Jr., Chadwell, Keyser, Ruggles, McGee & Hastings, Chicago, Ill.; Howard Hoosin and William G. Taffe, Glenview, Ill.; William E. Willis, Sullivan & Cromwell, New York City; and Frederic L. Ballard, Ballard, Spahr, Andrews & Ingersoll, Philadelphia, Pa.*

ORDER REQUIRING ADDITIONAL BRIEFING

The Commission recently accepted and placed upon the public record for comment a consent order against International Business Machines Corporation, File No. 761 0063, pertaining to an allegedly unlawful interlocking directorate. At oral argument in Dkt. 9035 counsel were invited to comment upon the IBM order, but the necessity and purpose of such comment were left subject to question. The Commission desires the views of the parties in this matter concerning the following:

Assuming *arguendo* that the Commission finds that SCM has violated the law and that a remedial order is deemed appropriate, is the remedial approach taken in the IBM consent order preferable (and in what respects and why) to the order recommended in this case by the administrative law judge?

Receipt of the views of respondent SCM will, of course, be without prejudice to the position expressed in its brief that the consent order signed by respondent Kraftco is the appropriate one, but the Commission seeks the views of respondent as to the relative merits of the ALJ's proposed order and the IBM order. Therefore,

*It is ordered*, That within fifteen days from receipt of this order, the parties shall submit memoranda in response to the above-mentioned question.

IN THE MATTER OF  
COMMERCIAL PROGRAMMING UNLIMITED, INC., ET AL.  
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION AND TRUTH IN LENDING ACTS

*Docket 9029. Complaint, Apr. 23, 1975 — Decision, Dec. 9, 1976*

Consent order requiring a New York City training school for data processing and computer programming, among other things to cease misrepresenting employment opportunities and demands for graduates of their training courses; misrepresenting the effectiveness of their job placement service; and misrepresenting the advantages of taking additional courses. Respondents must advise prospective students of their right to cancellation and refund and provide certain written disclosures relating to job placement and dropout rates of former students. Additionally, respondent is required to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such disclosures as are required by Regulation Z of the said Act.

*Appearances*

For the Commission: *Alice T. Petizon* and *Joseph C. Galardi*.

For the respondents: *David Edelman* and *Walter S. Jennings*, New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Commercial Programming Unlimited, Inc., a corporation, and Walter Small, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, 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:

PAR. 1. Respondent Commercial Programming Unlimited, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 853 Broadway, New York, New York.

Respondent Walter Small is an individual and an officer of the corporate respondent. He formulates, directs and controls the policy, acts and practices of the corporation, including the acts and practices



hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale and sale of courses of instruction in electronic data processing, including courses in computer programming, console operation and keypunch to the public.

#### COUNT 1

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing prospective students to enroll in their courses of instruction, respondents engage in the advertising of said courses of instruction in newspapers of interstate circulation, and the sale of said courses to consumers located in various States of the United States. In the further course and conduct of their business, respondents also cause pamphlets, brochures, checks and other documents and communications pertaining to said courses to be transmitted by the United States mail and other means in or affecting commerce. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing prospective students to enroll in said courses of instruction, respondents have made statements orally and in writing, both specific and implied, in newspaper advertisements and other advertising and promotional material, and directly to said prospective students in the sales presentations made by their sales persons and other representatives. The following are typical and illustrative of the aforesaid statements and representations, but not all inclusive thereof:

- (a) Jobs waiting – thousands of new trainees needed in Data Processing field.
- (b) Interviews now being conducted to select candidates for intensive program \* \* \* to satisfy acute need for IBM trained data processing employees in business and government.
- (c) \* \* \* Leaders in the field predict that in the next 20 years it will be practically impossible for well-trained people to be out of work.
- (d) \* \* \* The growth of the data processing industry has been so phenomenal that an acute shortage of well-trained qualified personnel exists.
- (e) There is a demand for well-trained people in this field and it will not be satisfied for many years.
- (f) Business firms using IBM equipment are making very attractive offers to urgently needed graduate trainees. Pay is high. Raises are frequent. Opportunity for advancement is unlimited.

(g) Trainees need give up their present jobs only when they accept better jobs in the data processing field.

(h) CPU (Commerical Programming Unlimited) offers on-the-job assistance and counseling, and also maintains a FREE PLACEMENT SERVICE.

(i) To become a computer programmer, there are no rigid requirements. One does not have to understand the electronics of a computer and mathematical training is not a necessity. Of primary importance is that one have good reasoning ability and a logical orderly mind.

(j) \* \* \* Ask whether an aptitude test is required before acceptance for a programming course as this is a requirement for most legitimate schools. The authentic IBM Programmers Aptitude Test is given at CPU to applicants at no charge.

(k) Many authorities consider them (respondents' texts and instructional manuals) to be among the finest in the entire field of data processing.

(l) No other school can compare with the quality of the course.

PAR. 5. By and through the use of the above quoted statements and representations, and others of similar import and meaning but not expressly set out herein, respondents represent and have represented, directly or by implication, that:

1. All that is necessary for the placement of respondents' graduates as programmers, console operators, or as trainees in these areas is the completion of the applicable courses offered by respondents.

2. Requirements such as a college education or job experience are not necessary or advantageous for the placement of graduates of said courses in positions in the electronic data processing field.

3. There is a significant or substantial need or demand for all or most of respondents' graduates in positions for which respondents train such persons.

4. Respondents had a reasonable basis from which to conclude that:

(a) there was at the time such representations were made, or

(b) there would be at the time that persons then enrolling graduated from respondents' courses,

a significant or substantial need or demand for all or most of respondents' graduates in positions for which respondents train such persons.

5. Respondents maintain a free placement service to assist their graduates in obtaining employment, and this placement service has been successful in obtaining jobs for graduates who have sought its assistance.

6. All or substantially all of respondents' graduates are able, on graduation, to secure the positions for which respondents have trained them, and can expect virtually continuous employment in such positions for the next twenty years.

7. Respondents had a reasonable basis from which to conclude that:

- (a) At the time such representations were made a substantial number of respondents' graduates were being hired, or
- (b) A substantial number of persons then enrolling in respondents' courses would upon graduation, be hired

in positions for which respondents train such persons, and that they can expect virtually continuous employment in such positions for the next twenty years.

8. Students who wish to enroll in said courses of instruction are given an aptitude test endorsed by IBM which determines their suitability for computer programming and their chances for success in the computer programming field.

9. Acceptance in or admission to said courses of instruction is determined to a substantial degree by a prospective student's aptitude for computer programming as determined by the IBM aptitude test given to such students prior to enrollment.

10. There is a reasonable basis from which to conclude that a substantial number or percentage of the graduates of said courses of instruction earn high pay and receive frequent raises.

PAR. 6. In truth and in fact:

1. The completion of respondents' courses is not sufficient in many instances to enable graduates of said courses to secure placement as programmers, console operators, or as trainees in these areas.

2. In most instances college education or job experience is advantageous for the placement of respondents' graduates in positions in the electronic data processing field and in many instances college education or job experience is necessary for such placement.

3. At the time it was so represented there was not a significant or substantial need or demand for all or most of respondents' graduates, in positions for which respondents train such persons.

4. Respondents had no reasonable basis from which to conclude that:

- (a) there was at the time such representations were made, or
- (b) there would be at the time that persons then enrolling graduated from respondents' courses,

a significant or substantial need or demand for all or most of respondents' graduates in positions for which respondents train such persons.

5. While respondents ostensibly maintain a placement office, this office provides graduates with little or no advice or assistance in securing employment, but tries instead through a variety of means to discourage them from using its service. The placement assistance

furnished by respondents is not free, but rather is included in the tuition cost of respondents' courses.

6. All or substantially all of respondents' graduates are not able, on graduation, to secure the positions for which respondents have trained them, and they cannot expect virtually continuous employment in such positions for the next twenty years.

7. Respondents had no reasonable basis from which to conclude that:

- (a) at the time such representations were made a substantial number of respondents' graduates were being hired, or
- (b) a substantial number of persons then enrolling in respondents' courses would upon graduation, be hired

in positions for which they have been trained or that they can expect virtually continuous employment in such positions for the next twenty years.

8. The IBM aptitude test given by respondents is not a reliable indicator of the individual's suitability for computer programming or his chances for success in the computer programming field.

9. Acceptance in or admission to said courses of instruction is not determined by programming aptitude as measured by the IBM aptitude test, since persons who did not qualify for the course based on such tests were accepted in said program.

10. Respondents had no reasonable basis from which to conclude that a substantial number or percentage of the graduates of said courses of instruction earn high pay and receive frequent raises.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were, and are, false, misleading, deceptive and unfair acts and practices.

PAR. 7. Through the use of the aforesaid advertisements and otherwise, respondents have represented directly or by implication that there was at the time of the representations or would be at the time of graduation from respondents' courses a significant or substantial need or demand for all or most of respondents' graduates in positions for which respondents train such persons; that graduates of said courses would be virtually assured of securing employment in positions for which they have been trained, and that they could expect virtually continuous employment in such positions for the next twenty years; and that a substantial percentage or number of graduates of such courses of instruction earn high pay and receive frequent raises. At the time of the said representations respondents had no reasonable basis adequate to support such representations. Therefore the aforesaid acts and practices were, and are, unfair acts or practices.

PAR. 8. In the further course and conduct of their aforesaid business, and for the purpose of inducing prospective students to enroll in their courses of instruction, respondents have made representations, both specific and implied, directly to said prospective students in the oral sales presentations made by their sales persons and other representatives, that it is advantageous to take more than one of said courses of instruction to gain proficiency in a particular area of data processing and to enhance their employment prospects, and that respondents own a computer located on the premises of their place of business which is readily accessible and will enable students to gain sufficient practical experience to aid in securing employment.

PAR. 9. In truth and in fact, computer programming, console operation and keypunch are distinct occupational categories, and knowledge of one category is not of substantial benefit for employment in any other. Furthermore, since employment prospects for graduates of said courses are not promising, additional courses of instruction do not serve to enhance a student's employment prospects. Furthermore, respondents do not own a computer, but instead rent on a part-time basis a machine at a location distant from their place of business, which does not provide students ready access to a computer to gain adequate practical experience to obtain employment. Therefore, the statements and representations as set forth in Paragraph Eight hereof were, and are, false, misleading, deceptive and unfair.

PAR. 10. Respondents offered for sale courses of instruction intended to prepare graduates thereof for entry-level employment as computer operators, computer programmers or computer technicians without disclosing in advertising or through their sales representatives: (1) the percentage of recent graduates of each school for each course offered, that were able to obtain employment in the positions for which they were trained; (2) the employers that hired any such recent graduates for each course offered; (3) the initial salary any such recent graduates received for each course offered; and (4) the percentage of recent enrollees of each school for each course offered that have failed to complete their course of instruction. Knowledge of such facts would be an indication of the probability of graduating from respondents' courses and would indicate the possibility of securing future employment upon graduating and the nature of such employment. Thus, respondents have failed to disclose material facts, which if known to a consumer would be likely to affect his or her consideration of whether or not to purchase such course of instruction. Therefore, the aforesaid acts and practices were, and are, false, misleading, deceptive or unfair acts or practices.

PAR. 11. Through the aforesaid acts and practices, respondents have

induced persons to pay or to contract to pay to respondents substantial sums of money for courses of instruction which were of little use or value to said persons in obtaining employment in the jobs for which they were purportedly trained. Respondents have received the said sums of money and have failed to offer refunds or to refund said sums of money or to rescind the contractual obligations of said persons.

Therefore, the aforesaid acts and practices, the receipt of and failure to offer to refund or to refund said sums of money, and the failure to rescind said contractual obligations were, and are, unfair or deceptive acts or practices.

PAR. 12. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of courses covering the same or similar subjects.

PAR. 13. The use by respondents of the aforesaid false, misleading, unfair or deceptive statements, representations, acts and practices, and their failure to disclose material facts, as aforesaid, have had, and now have, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete, and to induce a substantial number thereof to purchase respondents' courses by reason of said erroneous and mistaken belief.

PAR. 14. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

#### COUNT II

Alleging violations of the Truth in Lending Act, and the implementing regulation promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraphs One and Two hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 15. In the ordinary course of their business as aforesaid, respondents regularly extended consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 16. Subsequent to July 1, 1969, in the ordinary course of their business as aforesaid, and in connection with their credit sales, as "credit sales" are defined in Regulation Z, respondents have caused and

are causing their customers to enter into contracts for the sale of respondents' services.

PAR. 17. By and through the use of these contracts, respondents have not provided their customers with all credit cost information, as required by Regulation Z, the implementing regulation of the Truth in Lending Act, in that they have:

1. Failed to use the term "total downpayment" to describe the sum of all fees included in the downpayment, as required by Section 226.8(c)(2) of Regulation Z.

2. Failed to use the term "amount financed" to describe the amount of credit of which the customer has the actual use, as required by Section 226.8(c)(7) of Regulation Z.

3. Failed to disclose the sum of the payments scheduled to repay the indebtedness, and to describe that sum as the "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

4. Failed to disclose the "annual percentage rate" accurately to the nearest quarter of one percent, in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

PAR. 18. Pursuant to Section 103(q) of the Truth in Lending Act, respondents' aforesaid failure to comply with the provisions of Regulation Z constitute violations of that Act and, pursuant to Section 108 thereof, respondents have thereby violated the Federal Trade Commission Act.

#### DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the Truth in Lending Act and Regulation Z, and the respondents having been served with a copy of that complaint; and

The Commission having withdrawn the matter from adjudication for the purpose of considering settlement by the entry of a consent order; and

The respondents 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 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 set forth in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of

sixty (60) days, now in further conformity with the procedures prescribed in Section 3.25(d) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order.

1. Respondent Commercial Programming Unlimited, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 853 Broadway, New York, New York.

Respondent Walter Small is an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

2. 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 respondents Commercial Programming Unlimited, Inc., a corporation, its successors and assigns, and its officers, and Walter Small, individually and as an officer of the corporate respondent, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, franchise or other device in connection with the creating, advertising, promoting, offering for sale, sale or distribution of courses of study, training or instruction in the field of electronic data processing or any other course in any field, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, orally, in writing or in any other manner, directly or by implication, that:

(a) College education is not necessary in all cases or advantageous for the placement of persons as computer programmers or computer programmer trainees; job experience is not necessary in all cases or advantageous for the placement of persons in the field of electronic data processing; or otherwise representing that persons with a high school education or its equivalent will achieve employment in the electronic data processing field, unless in every such instance it is disclosed, in immediate and conspicuous conjunction therewith, that college education or job experience is advantageous for placement; or misrepresenting in any manner the qualifications necessary to achieve employment in any field.

(b) There is a substantial demand, or demand of any size or proportion, for persons completing any of the courses offered by the



respondents in the area of electronic data processing or any other field, or otherwise representing that opportunities for employment, or opportunities of any type or number are available to such persons or that persons completing said courses will or may earn any specified amount of money, or otherwise representing by any means the prospective earnings of such persons except as hereafter provided in Paragraph 7 of the order.

(c) Graduates of respondents' courses of instruction are virtually assured of placement in positions for which they have been trained; or misrepresenting in any manner the employment prospects of any persons completing respondents' courses of instruction.

(d) The IBM aptitude test or any such test or entrance examination by itself can reliably determine a person's suitability for employment in the field of electronic data processing; or misrepresenting in any manner the meaning, purpose, benefit, significance or use of any examination or test or its results.

(e) Acceptance in or admission to any courses of instruction offered by respondents or others is determined solely by the applicant's suitability for such work as determined by the IBM aptitude test given to prospective students prior to enrollment.

2. Representing, orally, in writing or in any other manner, directly or by implication, that respondents own a computer or computers which enable students to gain sufficient practical experience in the operation of a computer, thereby aiding them in securing employment; or misrepresenting in any manner the facilities or equipment available to enrollees in courses of instruction offered by respondents or others.

3. Using any false inducements or representations to obtain enrollees for any of said courses of instruction or to obtain the signature of any such enrollee on documents which obligate any such enrollee to expend or pay any money.

4. Misrepresenting, orally, in writing, or in any other manner, directly or by implication, that:

(a) The training offered to students enrolled in any courses of instruction offered by the respondents or others is by itself, sufficient to qualify graduates thereof for positions as computer programmers, console operators, or as trainees in these areas, or for any other positions in the electronic data processing field; or the significance or importance of any course of instruction in qualifying any person for employment in a particular field of endeavor.

(b) The assistance provided by respondents in obtaining employment for graduates, or the effectiveness of respondents' placement service in obtaining employment for graduates of any course of instruction.

(c) The benefits to be derived by completing more than one course of instruction offered by respondents.

5. Selling more than one course of instruction or a course of instruction which combines computer programming, console operation and/or key punch to any student without obtaining a separate signed and dated document stating the following information and none other, printed in capital and lower case letters of not less than 12 point bold-faced type, in English and in Spanish, a copy of which is to be given to the customer prior to his enrolling in the course.

#### IMPORTANT NOTICE

Taking more than one course of instruction does not significantly improve, but may help, a student's employment chances because:

1. To be a computer programmer a student does not need to know console operation or key punch;
2. To be a console operator, a student does not need to know computer programming or key punch;
3. To be a key punch operator, a student does not need to know computer programming or console operation.

6. Selling more than one course of instruction or a course of instruction which combines computer programming, console operation and/or key punch without advising prospective enrollees to read the notice set forth in paragraph five (5) above in the language in which the initial sales presentation took place.

7. Failing to provide to each enrollee of any course of instruction, prior to the signing of any contract, the following information which shall be disclosed in writing, clearly and conspicuously, and in the form and manner prescribed in Appendices A, B or C, as applicable, and for a base period designated as described in Appendix D:

(1) The number and percentage of enrollees who have failed to complete their course of instruction, such percentage to be computed separately for each course of instruction offered by respondents at each school, location or facility;

(2) The placement rate, ratio or percentage for enrollees and graduates, and also the numbers upon which such rates, ratios or percentages are based; such rate or percentage to be computed separately for each course of instruction offered by respondents at each school, location or facility;

(3) The salary range of respondents' students as to the same students used to compute the placement percentage in (2) above;

(4) A list of firms or employers which have hired graduates of said courses in substantial numbers and in the positions for which such graduates have been trained, and the number of such graduates hired,

as to the same graduates used to compute the placement percentage in (2) above.

*Provided, however,* that the above information shall be disclosed only for enrollees who are U.S. citizens and others who, by law, are eligible to work in the United States.

*Provided, however,* that the following two notes may be included in Appendices A, B, or C as applicable:

Note: In compiling this data, information was sought from all graduates from the period of (the base period) and responses were received from (number) graduates.

Note: This data shows the dropout and placement records only for U.S. citizens and others who, by law, are eligible to work in the United States. Information on foreign students is not included.

*Provided, however,* that the above information need not be provided for courses of instruction concerning (a) Concepts of S/360 For Computer Operations; (b) Concepts of S/360 For Computer Programming; (c) Business English and Report Preparation; however, this provision shall not in any way affect respondents' obligation to disclose the information for courses of instruction in computer programming, computer operation and key punch.

*Provided, however,* respondents shall disclose in the form and manner prescribed in Appendices A, B or C to each enrollee of a course of instruction concerning (a) Concepts of S/360 For Computer Operations; (b) Concepts of S/360 For Computer Programming; and (c) Business English and Report Preparation, a notice stating: Concepts of S/360 Computer Programming, Concepts of S/360 Computer Operations and Business English and Report Preparation (or other title as the case may be) may be taken in conjunction with another course of instruction. There is no separate placement information for any of these courses.

*Provided, however,* this paragraph shall be inapplicable to any school newly established by respondents in a metropolitan area or county, whichever is larger, where they previously did not operate a school, or to any course newly introduced by respondents until such time as the new school or course has been in operation for the base period established pursuant to Appendix D as prescribed in the paragraph. However, during such period the following statement, and no other, shall be made in lieu of the disclosure form required by this paragraph:

#### DISCLOSURE NOTICE

This school (or course, as the case may be) has not been in operation long enough to indicate what, if any, actual employment or salary may result upon graduation from this school (course).

8. (a) Contracting for the sale of any course of instruction in the form of a sales contract or any other agreement which does not contain in immediate proximity to the space reserved in the contract for the

signature of the prospective enrollee in boldface type of a minimum size of ten (10) points, a statement in the following form:

You, the prospective enrollee, may cancel this transaction at any time prior to midnight of the tenth business day after the date of this transaction. See attached notice of cancellation form for an explanation of this right.

(b) Failing to furnish each prospective enrollee, at the time he signs the sales contract or otherwise agrees to enroll in a course of instruction offered by respondents, a complete form in duplicate, which shall be attached to the contract or agreement, and easily detachable, and which shall contain in ten (10) point boldface type the following information and statements:

NOTICE OF CANCELLATION

(enter date of transaction)

\_\_\_\_\_  
(Date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN TEN (10) BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY EVIDENCE OF INDEBTEDNESS SIGNED BY YOU WILL BE RETURNED WITHIN FIFTEEN (15) BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND

ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL THIS TRANSACTION YOU MUST RETURN, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY BOOKS OR OTHER MATERIALS PROVIDED TO YOU UNDER THIS CONTRACT OR SALE. THESE MATERIALS MUST BE MAILED OR DELIVERED BY YOU TO (Address of Seller's place of business) WITHIN TEN (10) DAYS OF THE DATE YOU CANCEL THIS TRANSACTION. IF YOU FAIL TO RETURN THESE MATERIALS, THEN SELLER MAY DEDUCT THE COST OF BOOKS AND MATERIALS AS LISTED IN THE ENROLLMENT AGREEMENT.

TO CANCEL THIS TRANSACTION, DELIVER (and obtain a signed statement from SELLER indicating the date of delivery) OR MAIL A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO (Name of Seller), AT (Address of Seller's place of business) NOT LATER THAN MIDNIGHT OF (Enter date of 10th business day following date of transaction).

I HEREBY CANCEL THIS TRANSACTION.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Buyer's Signature)

(c) Failing to orally inform each prospective enrollee of his right to cancel at the time he signs a contract or agreement for the sale of any course of instruction.

(d) Failing to provide a signed statement indicating the date of delivery to a prospective enrollee who delivers a notice of cancellation to respondents.

(e) Misrepresenting in any manner the prospective enrollee's right to cancel.

(f) Failing or refusing to honor any valid notice of cancellation by a prospective enrollee and within fifteen (15) business days after the receipt of such notice, to: (i) refund all payments made under the contract or sale; *provided, however*, that respondents may deduct from said refund the cost of any books or materials as listed in the enrollment agreement that are not returned by the student within ten (10) days of the date after the transaction has been cancelled as stated above; (ii) return any goods or property traded in, in substantially as good condition as when received by respondents; (iii) cancel and return any evidence of indebtedness signed by the prospective enrollee in connection with the contract or sale.

(g) During the cancellation period described herein, respondents shall not initiate contacts with such contracting persons other than contacts permitted by this paragraph, except for the sole purpose of reminding students of the day classes will commence and the amount of tuition due.

9. Making any representations of any kind whatsoever, which are not already proscribed by other provisions of this order, in connection with the advertising, promoting, offering for sale, sale or distribution of courses of study, training or instruction in the field of electronic data processing or any other course offered to the public in any field in or affecting commerce, for which respondents have no reasonable basis prior to the making or dissemination thereof.

## II

*It is further ordered*, That respondents, Commercial Programming Unlimited, Inc., a corporation, its successors and assigns, and its officers and Walter Small, individually and as an officer of the corporate respondent, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, franchise or other device, in connection with any consumer credit sale, as "consumer credit" and "credit sale" are defined in Regulation Z (12 C.F.R. §226) and the Truth in Lending Act (Pub. Law 90-321, 15 U.S.C. §1601, *et seq.*), do forthwith cease and desist from:

1. Failing to disclose the sum of all fees and other charges included

in the downpayment, and to describe that sum as the "total downpayment," as required by Section 226.8(c)(2) of Regulation Z.

2. Failing to disclose the amount of money of which the customer has the actual use, and to describe that amount as the "amount financed," as required by Section 226.8(c)(7) of Regulation Z.

3. Failing to disclose the sum of the payments scheduled to repay the indebtedness, and to describe that sum as the "total of payments," as required by Section 226.8(b)(3) of Regulation Z.

4. Failing to disclose the annual percentage rates accurately to the nearest quarter of one percent, in accordance with Section 226.8(b)(2) of Regulation Z.

5. Failing in any consumer credit transaction or advertisement to make all disclosures, determined in accordance with Sections 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by Sections 226.6, 226.8 and 226.10 of Regulation Z.

*It is further ordered,* That respondents maintain adequate records, to be furnished upon request of the Federal Trade Commission, which evidence compliance with the provisions of this order, including, but not limited to, the names, addresses and scores of all enrollees who take an aptitude test of any kind, copies of all contracts entered into between respondents and customers, copies of all correspondence between respondents and their customers, records showing the name and address of each student, the dates of his attendance, the date of his graduation or other termination of his studies, the names and addresses of any employers he was referred to, if any, and his current position.

*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 which relates in any way to the sale or offering for sale of any courses of study, training or instruction. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

*It is further ordered,* That a copy of this order to cease and desist be delivered to all present and future personnel of respondents.

*It is further ordered,* That respondents:

(a) deliver, or cause to be delivered, a copy of this order to all persons who now or in the future become franchisees of respondents for the operation of a vocational school program.

(b) inform all franchisees that respondents are obligated to terminate those franchisees who continue the acts or practices prohibited by this order.

(c) institute a program of continuing surveillance to reveal whether

the business operations of each of said franchisees conform to the requirements of this order.

(d) upon receiving actual knowledge from any source (including but not limited to respondents' program of surveillance, and representatives of the Federal Trade Commission) of facts indicating a violation of any provision of this order by any of respondents' present or future franchisees, respondents shall within 24 hours notify such franchisee by certified mail, return receipt requested, that such violation of this order has occurred ("Notice"), and that respondents will discontinue dealing with said franchisee upon receipt by respondents of actual knowledge of any further violations of this order by such franchisee. Respondents shall obtain from such franchisee written acknowledgement of receipt of such Notice with acknowledgement and shall indicate the date of receipt of such Notice.

Upon receiving actual knowledge from any source (including but not limited to respondents' program of surveillance, and representatives of the Federal Trade Commission) of facts indicating any violations of any provision of this order, following a franchisee's receipt of the aforesaid "Notice," and said violations are not corrected within 30 days, respondents shall permanently terminate such franchisee.

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

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

*It is further ordered*, That in the event the Federal Trade Commission should promulgate a trade regulation rule concerning proprietary vocational and home study schools, any pertinent provisions of such rule shall supersede any comparable provisions of this order.

#### APPENDIX A (FOR KEYPUNCH OPERATOR COURSE)

(NAME OF SCHOOL)

#### IMPORTANT INFORMATION FOR PROSPECTIVE STUDENTS

Below is the dropout rate, job placement rate and starting salaries for students in the (name of course) between (date) and (date). Please

read this page carefully before you decide whether or not to enroll in this school.

1. Total number of students: ..... (number)
2. Students who failed to complete the course: ..... (number) – (percent)
3. Students (whether graduating or not) who obtained employment as keypunch operators or keypunch operator trainees: (number) – (percent)
4. Graduates who obtained employment as keypunch operators or keypunch operator trainees: ..... (number) – (percent)
5. Starting salaries of students who obtained employment as keypunch operators or keypunch operator trainees:
  - Less than \$75.00 per week: ..... (number) – (percent)
  - \$75 — \$100 per week: ..... (number) – (percent)
  - \$101 — \$125 per week: ..... (number) – (percent)
  - \$126 — \$150 per week: ..... (number) – (percent)
  - Over \$150 per week: ..... (number) – (percent)

6. Employers who hired graduates from the (name of course):

Names of Employers	Number of Graduates Hired
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Note: In compiling this data, information was sought from all graduates from the period of (the base period) and responses were received from (number) graduates.

Note: This data shows the dropout and placement records only for U.S. citizens and others who, by law, are eligible to work in the United States. Information on foreign students is not included.

Concepts of S/360 for Computer Programming, Concepts of S/360 for Computer Operations and Business English and Report Preparation may be taken in conjunction with another course of instruction. There is no separate placement information for any of these courses.



## APPENDIX B (FOR COMPUTER OPERATOR COURSE)

(NAME OF SCHOOL)

## IMPORTANT INFORMATION FOR PROSPECTIVE STUDENTS

Below is the dropout rate, job placement rate and starting salaries for students in the (name of course) between (date) and (date). Please read this page carefully before you decide whether or not to enroll in this school.

1. Total number of students: ..... (number)
2. Students who failed to complete the course: ..... (number) – (percent)
3. Students (whether graduating or not) who obtained employment as computer operators or computer operator trainees: (number) – (percent)
4. Graduates who obtained employment as computer operators or computer operator trainees: ..... (number) – (percent)
5. Starting salaries of students who obtained employment as computer operators or computer operator trainees:
  - Less than \$90.00 per week: ..... (number) – (percent)
  - \$90.00 – \$120.00 per week: ..... (number) – (percent)
  - \$121.00 – \$160.00 per week: ..... (number) – (percent)
  - \$161.00 – \$200.00 per week: ..... (number) – (percent)
  - Over \$200.00 per week: ..... (number) – (percent)

6. Employers hired graduates from the (name of course):

Names of Employers	Number of Graduates Hired
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Note: In compiling this data, information was sought from all graduates from the period of (the base period) and responses were received from (number) graduates.

Note: This data shows the dropout and placement records only for U.S. citizens and others who, by law, are eligible to work in the United States. Information on foreign students is not included.

Concepts of S/360 for Computer Programming, Concepts of S/360 for Computer Operations and Business English and Report Preparation may be taken in conjunction with another course of instruction. There is no separate placement information for any of these courses.

APPENDIX C (FOR COMPUTER PROGRAMMER COURSE)

(NAME OF SCHOOL)

IMPORTANT INFORMATION FOR PROSPECTIVE STUDENTS

Below is the dropout rate, job placement rate and starting salaries for students in the (name of course) between (date) and (date). Please read this page carefully before you decide whether or not to enroll in this school.

1. Total number of students: ..... (number)
2. Students who failed to complete the course: ..... (number) - (percent)
3. Students (whether graduating or not) who obtained employment as computer programmers or computer programmer trainees: ..... (number) - (percent)
4. Graduates who obtained employment as computer programmers or computer programmer trainees: ..... (number) - (percent)
5. Starting salaries of students who obtained employment as computer programmers or computer computer programmer trainees:
  - Less than \$120.00 per week: ..... (number) - (percent)
  - \$120.00 - \$160.00 per week: ..... (number) - (percent)
  - \$161.00 - \$200.00 per week: ..... (number) - (percent)
  - \$201.00 - \$250.00 per week: ..... (number) - (percent)
  - \$251.00 - \$300.00 per week: ..... (number) - (percent)
  - Over \$300.00 per week: ..... (number) - (percent)
6. Employers hired graduates from the (name of course):

Names of Employers	Number of Graduates Hired
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Note: In compiling this data, information was sought from all graduates from the period of (the base period) and responses were received from (number) graduates.

Note: This data shows the dropout and placement records only for U.S. citizens and others who, by law, are eligible to work in the United States. Information on foreign students is not included.

Concepts of S/360 for Computer Programming, Concepts of S/360 for Computer Operations and Business English and Report Preparation may be taken in conjunction with another course of instruction. There is no separate placement information for any of these courses.

#### APPENDIX D

1. "Base period" shall mean the calendar period of time:
  - a. From October 1 to March 31, inclusive; or
  - b. From April 1 to September 30, inclusive.
  - c. The first base period shall be the period from the first day of the second month following the effective date of the order to March 31, 1977 inclusive.
2. The three (3) month period immediately following the close of the base period shall be used by respondents to monitor and record the employment experience of all enrollees whose enrollment terminated during the base period. Respondents may not include in the computation of statistics for the base period persons whose enrollment terminated during the three (3) month recordation period. Such persons will be included in the statistics for the subsequent base period.
3. On July 1 of each year respondents shall begin to disseminate statistics for the base period which ended on March 31 of that year. Respondents shall continue to distribute said statistics until December 31.
4. On January 1 of each year respondents shall begin to disseminate statistics for the base period which ended on September 30 of the previous year, and shall distribute said statistics until June 30.

Complaint

IN THE MATTER OF  
INTERNATIONAL TELEPHONE AND TELEGRAPH  
CORPORATION, ET AL.

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

*Docket C-2854. Complaint, Dec. 10, 1976 — Decision, Dec. 10, 1976*

Consent order requiring a New York City conglomerate and its Miami, Fla., subsidiaries, ITT Community Development Corporation and Palm Coast, Inc., among other things, to cease misrepresenting or failing to make pertinent oral and/or written disclosures regarding the risks, value, and soundness of land development; misrepresenting the degree of development of the land they offer; failing to disclose additional costs to be incurred and misrepresenting the property's proximity to waterways, major roads, shopping and recreational facilities; and failing to disclose purchasers' rights to cancellation and refunds. Further, the order requires construction of particular facilities intended to improve the value of land already sold, and limits the sale of registered lots for a period of fifteen (15) years.

*Appearances*

For the Commission: *Edward J. Carnot, W. Roland Campbell, and Barbara S. Schanker.*

For the respondents: *Charles Lister, Covington & Burling, Washington, D.C.*

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, as amended, the Federal Trade Commission having reason to believe that International Telephone and Telegraph Corporation, a corporation, ITT Community Development Corporation, a corporation, and Palm Coast, Inc., a corporation, hereinafter referred to as respondents, by themselves and through their wholly-owned subsidiaries, have 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 International Telephone and Telegraph Corporation ("ITT") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 320 Park Ave., New York, New York. ITT is a conglomerate engaged directly and/or through its subsidiaries in numerous and diverse businesses including, among others: developing, manufactur-

ing, distributing, servicing and operating electronic and telecommunication equipment and other industrial and consumer products; processing wood pulp; manufacturing and distributing food products and automotive parts; and providing business and consumer services. In 1974, ITT had sales of approximately \$10 billion and assets of \$10 billion, making it one of the ten largest domestic corporations in terms of sales and assets.

PAR. 2. Respondent ITT Community Development Corporation ("ICDC") is a corporation organized, existing, and doing business under the laws of the State of Delaware, with its principal place of business located at 5225 Northwest 87th Ave., Miami, Florida. ICDC is a wholly-owned subsidiary of ITT. ICDC's predecessor was ITT Levitt Development Corporation, a wholly-owned subsidiary of ITT Levitt and Sons, Inc.

PAR. 3. Respondent Palm Coast, Inc. is a corporation organized, existing and doing business under the laws of the State of Florida, with its principal place of business located at 5225 Northwest 87th Ave., Miami, Florida. Palm Coast, Inc. is a wholly-owned subsidiary of ICDC.

PAR. 4. Respondents are now and for some time last past have been engaged, directly or through their subsidiaries, in the business of acquiring undeveloped land, subdividing said land into homesite lots, advertising, developing, offering for sale, and selling said homesite lots to the public. The subdivision in which lots have been and are being offered for sale by respondents is known as Palm Coast, and is located in Flagler County, Florida. The acreage of this subdivision is over 90,000 acres and, as of March 31, 1975, there were less than 700 shelter units at Palm Coast. Land sales are generally effected through sales offices operated by wholly-owned subsidiaries or independent real estate brokers.

PAR. 5. Respondents, directly or through their subsidiaries, sell the lots at Palm Coast to purchasers by use of standard form contracts, entitled "Homesite Purchase Agreement" (hereinafter sometimes referred to in this complaint as a "contract") whereby the purchaser pays monthly installments over terms ranging from one to ten years. According to the provisions of the contract, title to the lot remains in ICDC's name until final payment is made, or the lot completion date stated in the contract is reached, whichever is later; at the later date, title to the lot is to pass to the purchaser. Purchasers pay interest to the respondents during the contract term on the unpaid balance owing on the contract.

PAR. 6. In the course and conduct of the aforesaid business, respondents, directly or through their subsidiaries, now cause and, for some time last past, have caused promotional materials, contracts and

various business papers to be transmitted through the U.S. mail and other interstate instrumentalities from their places of business in Florida and New York to their agents, representatives, employees, customers and prospective customers in various other States and territories of the United States and the District of Columbia. Respondents now maintain and operate and, for some time last past, have maintained and operated places of business and have made substantial sales to purchasers in the various other States of the United States and the District of Columbia. Respondents maintain and, at all times mentioned herein, have maintained a substantial course of trade in said land in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 7. In the course and conduct of the aforesaid business and at all times mentioned herein, respondents have been and now are in substantial competition, in or affecting commerce, with corporations, firms and individuals in the sale of land.

PAR. 8. In the course and conduct of the aforesaid business, respondents, directly or through their subsidiaries, disseminate advertisements through television and radio broadcasts and in various publications of general circulation, distribute promotional material through the mail and in person to members of the public, and make sales presentations by means of oral and written statements, slides and movies. By and through such means, respondents have made various statements and representations, directly or by implication, concerning the size, good reputation, financial security, and integrity of International Telephone and Telegraph Corporation.

PAR. 9. By and through the use of such statements and representations, respondent International Telephone and Telegraph Corporation permitted and participated in the use of its name for the purpose of selling land and deriving pecuniary benefits therefrom.

PAR. 10. By and through the statements and representations alleged in Paragraph Eight, respondents have represented, directly or by implication, that respondent International Telephone and Telegraph Corporation is legally responsible for the debts and commitments of its subsidiary ICDC and the development of Palm Coast.

PAR. 11. In truth and in fact, ITT is not legally responsible for debts and commitments of its subsidiary ICDC or for the development of Palm Coast. Therefore, the acts or practices alleged in Paragraph Eight herein are unfair or deceptive.

PAR. 12. In the further course and conduct of the aforesaid business, respondents, directly or through their subsidiaries, have disseminated advertisements through television and radio broadcasts and in various publications of general circulation, distributed promotional materials

through the mail and in person to members of the public, and have made sales presentations by means of oral and written statements, movies and slides. By and through such means, respondents have made various statements and representations concerning the supply of and demand for land; the liquidity or marketability of land; land prices and values; land as an investment principles of buying land; personal financial security; inflation; the stock market, banks and annuities; population growth and movement; the location of industrial, commercial and recreational facilities; the past, present and future suitability of lots in respondents' property for investments or homesites; the financial terms for real estate investment; the various options or financial protections afforded purchasers of respondents' land; and the repurchase or resale by respondents of lots acquired by purchasers from respondents.

PAR. 13. By and through the statements and representations alleged in Paragraph Twelve herein, respondents, directly or through their subsidiaries, have represented, directly or by implication, that the lots which respondents are offering for sale are, at the prices at which respondents are offering them for sale, excellent investments, and that there is little or no financial risk involved in the purchase of said lots at said prices.

PAR. 14. In truth and in fact, in a significant number of instances, the lots which respondents are offering for sale, at the prices at which respondents are offering them for sale, are not excellent investments involving little or no financial risk to purchasers. Therefore, the acts or practices alleged in Paragraph Twelve herein are unfair or deceptive.

PAR. 15. In the further course and conduct of the aforesaid business, respondents, directly or through their subsidiaries, have offered and are offering for sale lots in their land development without disclosing to prospective purchasers that the lots being offered are, at the prices at which respondents are offering them, uncertain investments in that, *inter alia*, the future value of the lots being offered is uncertain and the purchaser probably will be unable to sell his lot, or his interest in it under the contract, at or above the purchase price without significant community development and population growth. Therefore, respondents have failed to disclose material characteristics of their lots which, if known to certain prospective purchasers, would be likely to affect their consideration whether to purchase a lot from respondents. Such failure to disclose is an unfair or deceptive act or practice.

PAR. 16. In the further course and conduct of the aforesaid business, respondents, directly or through their subsidiaries, have made various statements and representations to members of the public, by means of advertisements in various publications of general circulation, promo-

tional materials, TV and radio broadcasts, telephone calls and sales presentations involving oral statements, written statements, movies, and slides, concerning the past, present, and future development of respondents' property. The aforesaid statements and representations use words or terms such as "planned community," and "master plan," and other words or terms of similar import.

PAR. 17. By and through the statements and representations alleged in Paragraph Sixteen herein, respondents have represented, by implication, that substantially all lots are now, or by approximately the end of the purchaser's scheduled payments will be, located within a self-contained and fully developed community.

PAR. 18. In making the statements and representations alleged in Paragraph Sixteen herein containing express or implied references to the past, present and future development of respondents' property, respondents have failed to disclose clearly and conspicuously, and in reasonable conjunction with such statements and representations, the following information:

(a) Lots in respondents' property are not now and will not be, by approximately the end of the purchaser's scheduled payments, located within a self-contained and fully developed community.

(b) Respondents' property consists primarily of vacant acreage with limited industrial, commercial, shopping and recreational facilities; limited amenities, and limited public services. The amount of building that has occurred is modest in relation to the total acreage of the property.

Each element of information set forth above is a material fact, knowledge of which would be likely to affect the decision of certain prospective purchasers whether to sign a contract for the purchase of respondents' land. The acts or practices alleged in Paragraphs Sixteen and Seventeen and/or the failure to clearly and conspicuously disclose the aforesaid information are unfair or deceptive.

PAR. 19. In the further course and conduct of the aforesaid business, respondents, directly or through their subsidiaries, through statements or promotional materials, have represented, by implication, that the resale of a lot purchased from respondents is not difficult.

PAR. 20. In truth and in fact, there is virtually no resale market for lots, other than waterfront or core area lots, purchased at respondents' subdivision. Therefore, the representations, acts or practices alleged in Paragraph Nineteen herein are unfair or deceptive.

PAR. 21. In the further course and conduct of the aforesaid business, respondents, directly or through their subsidiaries, have made and are making statements orally in sales presentations concerning the prices and locations of the lots being offered for sale and to be offered for sale.



PAR. 22. By and through the statements alleged in Paragraph Twenty-One, respondents, directly or through their subsidiaries, have represented, directly or by implication, that a prospective purchaser must purchase a lot immediately to insure that the price will not increase or that the desired location will be available.

PAR. 23. In truth and in fact, most prospective purchasers do not have to purchase immediately to insure that prices will not increase or that desired locations will be available. Therefore, the acts or practices alleged in Paragraph Twenty-One herein are unfair or deceptive.

PAR. 24. In the further course and conduct of the aforesaid business, respondents, directly or through their subsidiaries, have presented purchasers and prospective purchasers with a contract, a property report required to be provided to the purchaser by Federal or State law, and in some instances additional lengthy or detailed documents. These documents contain information and provisions which could affect the decision of certain consumers to sign a contract for the purchase of respondents' land. Respondents, directly or through their subsidiaries, frequently have made available the aforesaid documents at dinner parties or other gatherings sponsored by respondents in circumstances where it is likely that many purchasers will not read such documents at all because they are insufficiently aware of their utility or significance, or it is likely that many prospective purchasers will not read such documents carefully, completely or with full comprehension of their meaning and import. The soliciting or obtaining, under such circumstances, of an agreement to purchase respondents' land, involving a substantial financial commitment by purchaser, is an unfair or deceptive act or practice.

PAR. 25. In the further course and conduct of the aforesaid business, respondents, directly or through their subsidiaries, have solicited and obtained signatures to the contract from purchasers, in circumstances where the purchasers do not have the opportunity to seek assistance of counsel or other professional advice to aid in understanding said provisions. Respondents, directly or through their subsidiaries, have discouraged purchasers from obtaining assistance of counsel or other professional advice in order to understand said provisions. The soliciting or obtaining of an agreement to purchase respondents' land, involving a substantial financial commitment by the purchaser, when the purchaser has not had an opportunity to seek assistance of counsel or other professional advice, together with the discouragement of purchasers who wish to seek assistance of counsel before entering into such agreement, constitute unfair or deceptive acts or practices.

PAR. 26. In the further course and conduct of the aforesaid business, respondents, directly or through their subsidiaries, have made various

oral statements in sales presentations concerning the import or significance of signing a contract for the purchase of respondents' land. By and through such statements, respondents have obscured the legal or practical significance of signing a contract. Therefore, the acts or practices alleged in this paragraph are unfair or deceptive.

PAR. 27. Respondents' land sales contracts contain various conditions and provisions which are printed on the reverse side of the "Homesite Purchase Agreement" without adequate warning to purchasers and prospective purchasers that the reverse side of the contract should be examined.

PAR. 28. The practice alleged in Paragraph Twenty-Seven herein is unfair or deceptive because it has a tendency and capacity to cause purchasers or prospective purchasers of Palm Coast lots to ignore conditions and provisions printed on the reverse side of the agreement and to mislead such purchasers as to the significance of such conditions and provisions.

PAR. 29. In the further course and conduct of the aforesaid business, respondents, directly or through their subsidiaries, have used and are using in their standard form contracts a provision whereby defaulting purchasers forfeit all payments previously made to respondents under the contract.

PAR. 30. The use by respondents of the aforesaid contract provision as described in Paragraph Twenty-Nine constitutes an unfair act or practice, in so far as that provision causes purchasers to forfeit, in the event of default, a sum larger than the damages suffered by respondents as a result of the default.

PAR. 31. In the further course and conduct of the aforesaid business, respondents have represented that certain facilities or improvements in Palm Coast will be available in the immediate future.

PAR. 32. In truth and in fact, some of the facilities or improvements referred to in Paragraph Thirty-One herein will not in the immediate future be made available at Palm Coast. Therefore the acts or practices alleged in Paragraph Thirty-One herein are unfair or deceptive.

PAR. 33. The "Homesite Purchase Agreement" used by respondents, directly or through their subsidiaries, contains a six-month refund provision according to the terms of which the purchasers must visit the lot in order to obtain a refund of all monies paid under the contract. Respondents, directly or through their subsidiaries, conduct tours of their subdivision so that purchasers may examine their land and decide whether or not to request cancellation of the contract. In most instances, however, purchasers do not see their own homesite lots; and respondents have sometimes sought to use these tours to sell purchasers

more land and to discourage such purchasers from exercising their cancellation privilege.

PAR. 34. The use of the tours in the manner described in Paragraph Thirty-Three constitutes an unfair or deceptive act or practice.

PAR. 35. In the further course and conduct of the aforesaid business, respondents have failed to provide purchasers and prospective purchasers with clear and adequate notice of various fees and charges which will or may have to be paid to respondents or others to utilize a lot for residential purposes. Further, such information is material, knowledge of which would be likely to affect the decision of certain purchasers or prospective purchasers whether to sign a contract for the purchase of respondents' land. The failure to clearly and conspicuously disclose the aforesaid information is unfair or deceptive.

PAR. 36. The use by respondents, directly or through their subsidiaries, of the aforementioned unfair or deceptive statements, representations or practices has had the capacity and tendency to mislead and deceive the purchasing public.

PAR. 37. The aforementioned acts and practices, as herein alleged, were and are all to the prejudice and injury of the public and respondents' competitors and constituted and now constitute unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished with a copy of a draft of complaint which the Atlanta Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, as amended; and

The respondents 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 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 thereafter considered the matter and having determined that it had reason to believe that the respondents have 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, and having duly considered the comments filed thereafter 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 International Telephone and Telegraph 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 320 Park Ave., New York, New York.

Respondent ITT Community Development 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 5225 Northwest 87th Ave., Miami, Florida.

Respondent Palm Coast, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 5225 Northwest 87th Ave., Miami, Florida.

2. 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

For the purposes of this order, the following definitions shall apply:

1. "Business Day" shall mean any calendar day except Saturday, Sunday and the following holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

2. "Contract" shall be limited to contracts for the sale of land.

3. "Land" shall be limited to any residential lot which has been or is being sold by one or more of the respondents to any purchaser.

4. "Purchaser" shall mean any person, partnership, corporation or other entity who has signed a contract to purchase land from one or more of the respondents.

5. "Property Report" shall be understood to include any Public Offering Statement, prospectus or other report required by State or Federal law to be provided to a purchaser or prospective purchaser of land.

As used in this order, a requirement to cease and desist from representing or misrepresenting shall include representing or misrepresenting directly or by implication.

For purposes of this order, all required disclosures shall be made in a clear and conspicuous manner.

*It is ordered*, That respondents International Telephone and Telegraph Corporation ("ITT"), ITT Community Development Corporation ("ICDC"), Palm Coast, Inc., ("Palm Coast"), and their officers, and their subsidiaries and the officers of those subsidiaries, and respondents' successors, assigns, agents, representatives and employees, directly or through any corporate or other device in connection with the advertising, offering for sale to prospective purchasers, or sale to purchasers of land, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Misrepresenting that respondent ITT or any business entity or third party is legally responsible for any debts or obligations of respondent ICDC or any of ICDC's subsidiaries.
2. (a) Failing, if ITT has not assumed legal responsibility for any of the debts or obligations of ICDC or any of its subsidiaries, to disclose in any property report the following statement:

The debts and obligations of ITT Community Development Corporation are NOT legally guaranteed by International Telephone and Telegraph Corporation, and International Telephone and Telegraph Corporation has not pledged its assets for the development of Palm Coast.

(b) Failing, if ITT has assumed legal responsibility for some or all of the debts or obligations of ICDC or any of ICDC's subsidiaries, to disclose in any property report the following statement, in which the blank portions are to be accurately completed:

ITT has assumed legal liability for approximately — percent [to the nearest 5 percent] of the total debts and obligations of [names of corporations for which debts and obligations have been guaranteed].

3. Failing to set forth as the title of any contract in boldface type the following language: "CONTRACT FOR THE PURCHASE OF LAND."
4. (a) Failing to include the following statement in 12 point boldface type on the first page of any contract:

This is a contract by which you agree to purchase land.

The future value of this land, as well as all undeveloped real estate, is speculative. You should not assume that the value of land will increase. Do not assume that you will be able to resell your land without significant community development and population growth.

You have ten (10) business days in which to determine whether to continue this contract or cancel it will full refund. See the attached "Notice of Cancellation" form for an explanation of your rights. Use this time to examine with care the property

report (also called a Public Offering Statement) which must be given to you at or before the time you sign this contract. It is suggested that you have both this contract and the property report reviewed by a qualified professional.

(b) Failing to include the following statement in any property report relating to land for which neither respondents nor any other parties are legally obligated to make a central sewer system available:

ITT Community Development Corporation is not legally obligated to provide a central sewer system in Section [number] of [name of subdivision]. Installation of a septic tank will be at your expense, which is now approximately [amount].

The use of a septic tank on your lot is contingent on approval by governmental authorities.

(c) Failing to include the following statement, completed as appropriate, in any property report relating to land for which a central sewer system may or will become available in the future, or such other language as clearly and fully sets forth and discloses the amount of any sewer connection fee(s) and the time and circumstances in which such fee(s) must be paid:

A central sewer system [may or will] be available to your lot in the future. [If or when] it becomes available, you will be required to pay a sewer connection fee, which is now approximately [amount], on the date that the sewer is available to your lot, whether or not connection is actually made at that time, or at the time [name of respondent] conveys title to the lot, whichever date occurs later.

(d) Failing to include the following statement in any contract:

Note to buyer: See page [insert page number] of the property report for statements relating to the additional expense for sewerage systems.

5. Failing to disclose the following statement in any promotional material relating to the sale of land:

Since land values are uncertain, you should consult a qualified professional before purchasing.

*Provided, however,* that the above statement need not be included in the following:

- (a) billboard advertisements;
- (b) radio or television advertisements of ten (10) seconds or less;
- (c) magazine advertisements of one-eighth page or less; or
- (d) newspaper advertisements of one-eighth page or less.

6. Failing to disclose in all sales presentations relating to the sale of land the following statement:

The future value of this land, as well as all undeveloped real estate, is speculative. You should not assume that the value of land will increase. Do not assume that

you will be able to resell your lot without significant community development and population growth. You should consult a qualified professional before purchasing.

7. Failing, where any provisions or conditions are set forth on the reverse side of the contract, to disclose at the bottom of the front side of the contract that the purchaser should examine the reverse side.

8. (a) Failing to include in boldface type in any contract, in immediate proximity to the space reserved in the contract for the signature of the purchaser, the following statement:

You, the purchaser(s), may cancel this transaction at any time prior to midnight of the tenth (10th) business day after the date on which you signed this contract. See the attached "Notice of Cancellation" form for an explanation of this right.

(b) Failing to provide each purchaser, at the time any contract is entered into, with two copies of a "Notice of Cancellation" granting the purchaser at least ten (10) business days after receipt of the notice in which to cancel the contract without any loss, expense, penalty or obligation.

9. Failing to inform a prospective purchaser orally, at or before the time a contract is signed, of his or her right to cancel the contract in accordance with the provisions of Paragraph 8 of this order.

10. Whenever respondents offer a refund that is contingent upon the purchaser taking a company-guided inspection tour of the property in which the purchaser's land is located:

(a) Failing to afford the purchaser three (3) business days after taking such tour in which to request a refund;

(b) Failing to include in any contract, in immediate proximity to any provision setting forth the availability of a refund upon the completion of a company-guided inspection tour of the property, the following statement:

You, the purchaser(s), have a right to cancel this contract if you take the company-guided tour of the property and notify the company prior to midnight of the third business day after the date of such tour.

(c) Failing orally to inform each purchaser of any such cancellation right at or before the execution of any contract and at the time any such tour is taken;

(d) Failing to furnish each purchaser immediately upon the conclusion of such tour, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be completed in accordance with subparagraph (e) of this paragraph, and shall consist of the following statements:

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Decision and Order

NOTICE OF CANCELLATION

[enter date of company-guided  
inspection tour  
of property]

[enter contract number]

YOU MAY CANCEL YOUR CONTRACT, WITHOUT ANY LOSS, EXPENSE, PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD (3rd) BUSINESS DAY AFTER THE ABOVE DATE.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT WILL BE RETURNED WITHIN TEN (10) BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE.

TO CANCEL YOUR CONTRACT, DELIVER OR MAIL (CERTIFIED MAIL, RETURN RECEIPT REQUESTED, IS RECOMMENDED) A SIGNED COPY OF THIS CANCELLATION NOTICE OR ANY SIMILAR WRITTEN CANCELLATION NOTICE, OR SEND A TELEGRAM OF CANCELLATION TO: ITT COMMUNITY DEVELOPMENT CORPORATION, AT *[address of place of business]* NOT LATER THAN MIDNIGHT OF \_\_\_\_\_.

IF TWO OR MORE PERSONS HAVE SIGNED THE CONTRACT AS PURCHASERS, EACH OF THOSE PERSONS SHOULD SIGN THIS NOTICE, IN ORDER TO CANCEL THE CONTRACT.

IF, HOWEVER, ALL OF THE PURCHASERS DO NOT SIGN THE NOTICE, THOSE WHO DO SIGN THEREBY REPRESENT THAT THEY ARE DULY AUTHORIZED TO ACT ON BEHALF OF ALL OF THE OTHER PURCHASERS.

I (WE) HEREBY CANCEL THE CONTRACT.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature(s)

(e) Failing, before furnishing to the purchaser the "Notice of Cancellation" set forth in subparagraph (d) of this paragraph, to complete both copies of such notice by entering the address of ICDC's place of business, the date of the company-guided inspection tour of the property, and the date, not earlier than the third business day following the date of such tour, by which the purchaser may give notice of cancellation.

11. Failing or refusing to honor any valid and timely notice of cancellation submitted by a purchaser in accordance with the provisions of Paragraphs 8 and 10 of this order, and within ten (10) business days after the receipt of such notice, to refund all payments made and cancel any indebtedness under the contract.

12. Failing in any promotional material, contract or sales presenta-



tion that expressly refers or relates to one or more specific lots, to disclose the existence, nature and location of any easements, mortgages and covenants running with the land.

13. Representing that any of respondents' lots is located within any property or portion thereof designated or described as a "self-contained" or "fully developed" community or designated or described by words or terms that are of similar import to "self-contained" or "fully developed" unless:

(a) those facilities, amenities and public services normally associated with a "self-contained" and "fully developed" community, including but not limited to shopping, commercial, recreational and industrial facilities, public services, and amenities, are available within the property in which each lot is located; and

(b) paved roads, electricity, telephone service, central water, and a sewer system or septic tanks are available to all lots within each property or portion thereof designated or described as a "self-contained" or "fully developed" community or by words or terms of similar import.

14. Failing to include in any contract a provision that if any utility or improvement which respondents are legally obligated to make available under the terms of a contract is not available to the lot which is the subject of the contract or if any of the facilities required by the contract to be provided by respondents are not completed

(i) within six (6) months of the date(s) certain specified in the contract or property report, for the availability or completion of the utility, improvement or facility, or, if there is no such date, within six (6) months after the maturity date of the contract, plus, whether or not there is such a date certain, the actual number of days of delay in the availability of any such utility, improvement or facility that are caused by any strike, work stoppage or other such event beyond respondents' control, or

(ii) if the availability of any such utility, improvement or facility is delayed by reason of any act or omission of any Federal, State or local governmental agency or officer, within eighteen (18) months after such date certain, or, if none, the maturity date of the contract,

respondents will, upon conclusion of the applicable period, provide the purchaser within fifteen (15) business days with notice of the unavailability or failure to complete, and of the purchaser's right to cancel and receive a full refund of monies paid, plus interest at the rate of seven percent (7%) per annum compounded annually on each payment made by the purchaser from the date of the payment to the date upon which the purchaser received notification of a right to refund.

15. (a) Failing, if any utility or improvement required to be provided by respondents under the terms of a contract is not available to the lot which is the subject of the contract or any facility required to be provided by respondents under the terms of a contract is not completed

(i) within six (6) months of any date certain specified in the contract or property report, for the availability or completion of the utility, improvement or facility, or, if there is no such date, within six (6) months after the maturity date of the contract, plus, whether or not there is such a date certain, the actual number of days of delay in the availability of any such utility, improvement or facility that are caused by any strike, work stoppage or other such event beyond respondents' control, or

(ii) if the availability of any such utility, improvement or facility is delayed by reason of any act or omission of any Federal, State or local governmental agency or officer, within eighteen (18) months after such date certain, or, if none, the maturity date of the contract,

to provide each purchaser with a notice by certified mail, return receipt requested, immediately upon the conclusion of the applicable period, which is titled "Important Notice of Your Right to a Refund." Such notice must clearly disclose the fact of default and state that the purchaser is entitled to a full refund plus interest at the rate of seven percent (7%) per annum compounded annually on the amount to be refunded, computed in accordance with the provisions of Paragraph 14 of this order.

(b) Failing to refund, to any purchaser who exercises the option for a refund, within sixty (60) days of receipt of such notification from the purchaser, all monies paid by the purchaser pursuant to the contract plus interest at the rate of seven percent (7%) per annum, compounded annually on each payment made by the purchaser, from the date of the payment to the date upon which the notification of the right to refund is received by the purchaser.

16. Imposing any condition or limitation upon the right of a purchaser to a refund as set forth in Paragraphs 14 and 15 of this order; *provided, however,* that respondents may require a purchaser to exercise an option for a refund within a stated time period of not less than thirty (30) days after the receipt by the purchaser of the notice required by Paragraphs 14 and 15 of this order; and may offer by mail to each purchaser the additional option of exchanging his or her land for other land in the same or a different portion of respondents' property; and may require a purchaser to execute a quitclaim deed or other documents necessary to release his or her interest in the land as to

which the purchaser has elected to accept a refund or exchange. All such documents shall be included in the same envelope used to mail the notice of right to refund described in Paragraphs 14 and 15 of this order and the purpose for which such documents are being sent shall be disclosed.

17. Making any statement or representation concerning the proximity to respondents' property of any city, the Atlantic Ocean, the Intracoastal Waterway, major shopping center, recreational or educational facility, or access to I-95, A1A or U.S. Highway 1 without disclosing, in immediate conjunction therewith and with the same conspicuousness as such statement or representation, the distance in road miles to the nearest two miles from such place or facility to the Welcome Center or similar facility on respondents' property.

18. Making any statement or representation using words such as "adjacent," "near to," or any word or term of similar import or meaning to describe the proximity to any specific lot in respondents' property of any city, the Atlantic Ocean, the Intracoastal Waterway, major shopping center, recreational or educational facility, or access to I-95, A1A or U.S. Highway 1, without disclosing, in immediate conjunction therewith and with the same conspicuousness as such statement or representation, the distance in road miles to the nearest two miles from such place or facility to the specific lot referred to in the statement or representation; *provided, however*, that if such distance is less than two miles, such distance shall be disclosed to the nearest one-fifth of a mile.

19. Making any statement or representation concerning any past, present or future population, employment or industrial statistic or trend or other statistic or trend, unless respondents have a reasonable basis to believe that such statistic or trend has or will in the near future have relevance to respondents' property or any part thereof to which such statement or representation relates.

A reasonable basis for a statement or representation shall consist of current, relevant and objective statistical or economic data or studies, where such data are collected or such studies are conducted in accordance with accepted applicable demographic, economic or statistical principles.

20. Making any written statement or representation concerning the purchase price of any land without disclosing:

(i) the nature and approximate amount of any additional payments that must be made by a purchaser to respondents in order to purchase such land;

(ii) the approximate cost of sewage connection or septic tank installation, as appropriate; and

(iii) the approximate cost of any tree stump removal, if necessary.

21. Failing, at least once during any sales presentation in which any statement or representation is made concerning the purchase price of any land, to disclose:

(i) the nature and approximate amount of any additional payments that must be made by a purchaser to respondents in order to purchase such land;

(ii) the approximate cost of sewage connection or septic tank installation, as appropriate; and

(iii) the approximate cost of any tree stump removal, if necessary.

22. Failing to include in any contract entered into on or after January 1, 1974, a provision limiting the amount forfeited, in the event of default, to an amount not larger than 44.8 percent of the cash price disclosed in the contract.

23. Soliciting the written acknowledgement of a purchaser that he or she has been afforded an opportunity to inspect respondents' land and has concluded that the land is satisfactory and in accord with all contractual agreements. This provision shall not be construed to prohibit respondents from providing a form of acknowledgement to the purchaser at the same time as the notice of cancellation required by Paragraph 10 herein, and informing such purchaser that he or she may elect at his or her option to return to respondents by mail the notice of cancellation, the acknowledgement, or neither of them.

24. Representing that the purchase for resale of land in respondents' property is a way to achieve financial security, to deal with inflation, or to become wealthy.

25. Representing that real estate is a good or safe investment, or the purchase of land in respondents' property is a good or safe investment.

26. Making any statement or representation that refers to or concerns investment in stocks, banks, annuities or any other form of investment other than respondents' land.

27. Making any statement or representation concerning the approximate number of homes presently located in respondents' property without disclosing in conjunction therewith and with the same prominence the approximate number of residential lots [to the nearest 1,000 lots] planned to be located within the property after respondents have finished subdividing it.

28. Representing that the prices of respondents' land periodically rise or that prices are increasing, have increased, or will increase, without disclosing at the same time, and by the same medium by which such representation is communicated, that such price increases are

made at respondents' discretion and do not necessarily relate to changes in the value of the land.

29. Representing, unless such is the fact, that respondents may or will buy back land from or resell for purchasers, or may or will set up a resale division, or that purchasers can resell their land or their interest therein at a profit.

30. Representing that respondents have undertaken any legal obligation or commitment to provide any facility or amenity without, in conjunction with any such representation, stating the calendar year during which the facility or amenity is, at the time of the representation, reasonably expected to be available.

31. Making any statement or representation as to any increase in the number of residents in respondents' property without disclosing in conjunction therewith the approximate number of such residents at the time the representation is made.

32. Making any statement or representation as to any increase in the number of facilities in respondents' property without disclosing in conjunction therewith the number of such facilities at the time the representation is made.

33. Making any statement or representation concerning possible visits by any purchaser or prospective purchaser to any lot in respondents' property without disclosing in conjunction therewith that such purchaser or prospective purchaser may not be able to visit such lot, unless such lot is capable of being reached by automobile.

34. Misrepresenting that land similar to that being offered for sale may not or will not be available in the future.

*It is further ordered:*

(a) That respondents deliver, by certified mail or in person, a copy of this order to all of their present or future salesmen, independent brokers, advertising agencies, and other employees of respondents who sell or, through personal contact or telephone communication with potential purchasers, promote the sale of land;

(b) That respondents provide a form to each of their present or future salesmen, independent brokers, others who, on behalf of respondents, sell land, and each person conducting tours for any purchaser or prospective purchaser on respondents' property, to be returned to respondents, clearly affirming the intention of that person to be bound by and to conform his business practices with the requirements of this order;

(c) That respondents inform each of the persons referred to in subparagraph (a) of this paragraph that respondents are required by this order not to use, and shall not use, any such person to sell or to

promote the sale of land unless that person complies with the provisions of this order;

(d) That respondents continue and improve their program of surveillance to determine whether the business operations of the persons described in subparagraph (b) of this paragraph conform with the applicable provisions of this order;

(e) That respondents upon receiving any information that any of the persons referred to in subparagraph (b) of this paragraph has violated any of the applicable provisions of this order shall cause such person to receive instruction in the terms and requirements of this Order, and if respondents subsequently receive reliable information that such person has, despite such instruction, continued to violate any provision of this order, respondents shall take steps promptly to suspend or terminate the employment or contractual relationship of the offending person with respondents.

*It is further ordered,* That if the Interstate Land Sales Full Disclosure Act, presently codified at 15 U.S.C. §§1701-20 (1970), or any regulation that has been or may be promulgated pursuant thereto, requires an act or practice that is prohibited by any provision of this order, or prohibits an act or practice that is required by any such provision, or is otherwise wholly or partly inconsistent with any such provision of this order, any such provision of this order shall be without legal force or effect, except insofar as such provision increases any time period within which any act may be performed.

*It is further ordered,* That nothing in this order shall be understood to prevent respondents from accurately representing or describing any contributions or services made or provided by ITT or any of its subsidiaries to ICDC or any of ICDC's subsidiaries.

*It is further ordered,* That, for a period of fifteen (15) years after the service upon respondents of this order, except with the prior authorization of the Federal Trade Commission, respondents shall limit and restrict the development presently known as Palm Coast and consisting of approximately 93,000 acres, to a maximum of approximately 48,000 registered lots in a maximum of 42,000 acres, including substantial areas set aside for commercial, industrial and reserve parcels, locations for multi-family housing, and areas of conservation and preservation; and, accordingly, respondents shall neither register any lots nor sell any registered lots in the balance of such approximately 93,000 acres.

*It is further ordered,* That the provisions of this order shall have no application to the sale of ten (10) or more residential lots by any of the respondents to a builder, developer or other person who purchases the lots for purposes of development. *Provided* that, for a period of fifteen (15) years after the service upon respondents of this order (or, if under

the following two paragraphs the Commission extends the fifteen-year period, for an additional period equal to any such extension), except with the prior authorization of the Federal Trade Commission, such sales of ten (10) or more residential lots at Palm Coast shall be confined to the 42,000 acres referred to in the preceding paragraph.

*It is further ordered*, That respondents shall, 720 days prior to the expiration of the aforementioned fifteen-year period, submit to the Commission a written report in which they shall describe the extent of development at Palm Coast, including, but not limited to, information regarding the number of dwelling units, the extent of recreational facilities, and the extent of public and commercial services.

*It is further ordered*, That unless, at the time of the submission of the report referred to in the preceding paragraph, it reliably appears that the number of dwelling units located or under construction at Palm Coast after the expiration of the fifteen-year period referred to above will be equal to at least 50 percent of the number of lots at Palm Coast then authorized for residential use as to which deeds are at that time held by purchasers or their assignees, the Commission may initiate proceedings under Section 3.72 of the Commission's Rules to extend the fifteen-year period for an additional period not to exceed five years. Any such extension must be ordered not later than the expiration of the fifteen-year period. Respondents shall not, by reason of this order, be deemed to have waived or abandoned any procedural step or right other than the right to seek judicial review of any proceedings provided for in this paragraph.

*It is further ordered*, That respondents shall not represent that as the result of any portion of this order any agency of the United States Government has endorsed or approved the land development presently known as Palm Coast.

*It is further ordered*, That, not later than six (6) years after the service upon respondents of this order, respondents shall cause the corporate headquarters of ICDC to be transferred to and located at respondents' property at Palm Coast, Florida.

*It is further ordered*, That respondents shall provide or lawfully cause others to provide, not later than six (6) years after the service upon respondents of this order, each of the following:

(1) shopping center building or buildings located upon respondents' land at Palm Coast with a total floor space of at least 40,000 square feet;

(2) an office and research park area located upon respondents' land at Palm Coast, to consist of at least 40 acres, which shall include appropriate roads, water lines, sewers and landscaping suitable for possible future construction of office buildings or research facilities;

(3) a multi-purpose office structure located within the office and research park area referred to in (2) herein, which shall have a total floor space of at least 5,000 square feet;

(4) an office building located upon respondents' land at Palm Coast, which shall be suitably designed to house the corporate headquarters of ICDC, and shall have a total floor space of at least 30,000 square feet;

(5) an interchange, substantially similar to plans submitted to the Florida Department of Transportation on or about August 17, 1972, that affords access to and egress from Highway I-95 at a location on or adjacent to respondents' property at Palm Coast; *provided, however*, that respondents' obligations with respect to such an interchange are conditioned upon (a) receipt of any and all authorizations and approvals that may be required from Federal, State and local governmental agencies, and (b) the agreement of all appropriate Federal, State and local governmental agencies that any such interchange shall form part of, and shall be administered and maintained by governmental authorities as part of, Highway I-95; and

(6) paving of the existing St. Joe Road, Flagler County, Florida, between Highway I-95 and U.S. Highway Route 1; *provided, however*, that respondents' obligations with respect to such paving are conditioned upon (a) the receipt of any and all authorizations and approvals that may be required from Federal, State and local governmental agencies, and (b) the agreement of all appropriate Federal, State and local governmental agencies that St. Joe Road shall continue to be a public road, and shall continue to be administered and maintained by governmental authorities as a public road.

*It is further ordered*, That respondents shall make good faith efforts to encourage a supermarket operator to establish a supermarket in the shopping center building or buildings referred to in this order to be provided at Palm Coast, including, if necessary, a good faith offer to agree to reasonable financial incentives, to continue for a period of at least two years, for the establishment of such supermarket.

*It is further ordered*, That respondents shall give notice to the Commission at least thirty (30) days in advance of the date of effectiveness of any proposed legal change in respondents' corporate form if that change may significantly alter or affect respondents' compliance with the provisions of this order.

*It is further ordered*, That respondents herein shall within sixty (60) days after service upon them of this order, file with 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  
INDIAN ARTS & CRAFTS, INC., ET AL.

*Docket 8965. Interlocutory Order, Dec. 14, 1976*

Denial of respondents' motion to correct official transcript of oral argument on appeal on grounds of mootness.

*Appearances*

For the Commission: *David R. Pender, Thomas C. Armitage, and Thornton P. Percival.*

For the respondents: *Carl Pruzan, Casey & Pruzan, Seattle, Washington, J. Richard Carr, Dempsey & Koplovitz, Washington, D.C. and David Shimek, Matthews, Dunn & Baily, Anchorage, Alaska.*

ORDER DENYING MOTION TO CORRECT OFFICIAL TRANSCRIPT OF  
ORAL ARGUMENT ON APPEAL

By motion received October 26, 1976, respondents in Dkt. 8965 asked that the transcript of oral argument before the Commission on appeal be corrected in certain designated respects. Complaint counsel opposed this request by response received November 3. Since the proceedings have been dismissed there is no need to resolve this disagreement between the parties and accordingly the motion to correct the transcript will be denied on grounds of mootness. A copy of respondents' motion will, however, as is customary, remain part of the public record of the case, thereby representing respondents' recollection as to the substance of the oral argument. Therefore,

*It is ordered,* That respondents' motion to correct official transcript of oral argument on appeal be, and it hereby is, denied.

IN THE MATTER OF

THE AMERICAN COLLEGE OF OBSTETRICIANS AND  
GYNECOLOGISTS

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

*Docket C-2855. Complaint, Dec. 14, 1976 --- Decision, Dec. 14, 1976*

Consent order, requiring a Chicago, Ill., professional association, among other things to cease publishing, promulgating and participating in the development of relative value scales which have the effect of establishing prices for medical and surgical services. Respondent is required to permanently cancel, repeal, abrogate and withdraw any and all relative value scales heretofore developed or disseminated and send copies of this order to association members and certain third-party payers together with a request for the return of all copies of relative value scales.

*Appearances*

For the Commission: *Lawrence E. Gray* and *Edward W. Abramowitz*.

For the respondent: *Paul G. Gebhard, Vedder, Price, Kaufman & Kammholz*, Chicago, Ill.; and *James M. Nicholson, Nicholson & Carter*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41, *et. seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The American College of Obstetricians and Gynecologists has violated the provisions of Section 5 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 as follows:

PARAGRAPH 1. Respondent, The American College of Obstetricians and Gynecologists ("ACOG"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1 East Wacker Dr., Chicago, Illinois.

PAR. 2. ACOG has approximately 12,500 members, or "Fellows," who are elected from the ranks of those physicians who have completed satisfactory postgraduate training and who have limited their professional activities to obstetrics and/or gynecology for the five years immediately prior to their application for membership. The Fellows elect the officers and district chairmen who constitute the Executive Board which manages the affairs of ACOG.

PAR. 3. Obstetrician-gynecologists are licensed physicians who specialize in medical and surgical treatment of women, particularly with relation to the processes of human reproduction. They are generally engaged in the private practice of medicine and surgery and derive substantial portions of their professional income from fees for medical and surgical treatment charged directly to patients or to insurers.

PAR. 4. The acts and practices of ACOG are in or affect commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In 1971 and again in 1974, ACOG prepared, published, and circulated to its members and others a document entitled "Relative Value Studies" which sets forth in non-monetary units comparative numerical values to surgical and medical procedures and other services performed by obstetrician-gynecologists. Each value is convertible into a monetary fee by the application of a dollar conversion factor to the basic unit.

PAR. 6. The preparation, publication, and circulation by ACOG of Relative Value Studies have the effect of establishing, maintaining, or otherwise influencing the fees which obstetrician-gynecologists charge for their professional services and are in violation of Section 5 of the Federal Trade Commission Act, as amended.

#### 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 respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 5 of the Federal Trade Commission Act; and

The respondent 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 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 of the charges in Paragraph Six of the complaint or that the law has been violated, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having provisionally accepted same and placed it 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 the Commission's Rules, now in further conformity with the procedure

provided by Section 2.34 of its Rules hereby issues its decision in disposition of the proceeding against the above-named respondent, makes the following jurisdictional findings, and enters the following findings and order:

1. Respondent, The American College of Obstetricians and Gynecologists ("ACOG"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1 East Wacker Dr., Chicago, Illinois.

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

## ORDER

## I

A. The term "relative value scale" means any list or compilation of surgical and/or medical procedures and/or services which sets forth comparative numerical values for such procedures and/or services, without regard to whether those values are expressed in monetary or non-monetary terms.

B. The term "ACOG" means the American College of Obstetricians and Gynecologists.

C. The term "effective date of this order" means the date of service of this order.

## II

*It is ordered*, That ACOG, its successors, or assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, shall:

A. Cease and desist from directly or indirectly initiating, originating, developing, publishing, or circulating the whole or any part of any proposed or existing relative value scale(s);

B. Cease and desist from directly or indirectly advising in favor of or against the use of, or contributing to the whole or any part of any proposed or existing relative value scale(s); *provided, however*, that nothing contained herein shall prohibit ACOG from furnishing testimony to any government body, committee, or instrumentality, or from furnishing to any third party or government body, committee, or instrumentality such information as may be requested; to the extent, however, that such information or testimony may bear directly or indirectly on compensation levels for obstetrical or gynecological services or procedures, it shall be limited to historical data, free of

editing or interpretation, and shall be completely described as to methodology;

C. Permanently cancel, repeal, abrogate, and withdraw any and all relative value scales which it has heretofore developed, published, circulated, or disseminated;

D. Within thirty (30) days after the effective date of this order, distribute by first class mail a copy of the Commission's complaint and order in this matter, as well as a letter, in the form shown in Appendix "A" to this order, to each of its Fellows and to each of the third-party payers and others listed in Appendix "B" to this order, instructing such third-party payers and others to return to ACOG all copies of ACOG relative value scales in their possession.

### III

*It is further ordered*, That ACOG shall notify the Commission at least thirty (30) days prior to any proposed change in its organization which might affect compliance obligations under this order, such as, but not limited to, dissolution, the emergence of a successor corporation, and the creation and/or dissolution of subsidiaries.

### IV

*It is further ordered*, That ACOG shall, within sixty (60) days after the effective date of this order, file with the Commission a written report showing in detail the manner and form of its compliance with each of the provisions of the order.

### V

Nothing in this order shall be construed to exempt The American College of Obstetricians and Gynecologists from complying with the antitrust laws or the Federal Trade Commission Act. The fact that any activity is not prohibited by this order shall not bar a challenge to it under such laws.

## APPENDIX A

### (ACOG LETTERHEAD)

TO: Recipients of ACOG Relative Value Studies

As you may be aware, the FTC has been investigating various components of health care, including relative value scale activities of ACOG. The Executive Board of the College no longer desires to continue such activities and has discontinued them. It has entered into

an agreement with the Federal Trade Commission to formalize the discontinuance of its relative value scales.

This agreement resulted in the issuance by the Federal Trade Commission on [date] of a complaint and the entry of a consent order which requires, in essence, that ACOG:

- (a) stop publishing and participating in development of relative value scales;
- (b) withdraw the relative value scales it has already published;
- (c) distribute a copy of the complaint and consent order to every ACOG relative value scale recipient; and
- (d) instruct all recipients of ACOG's relative value scales to return them to ACOG.

The complaint alleges basically that ACOG's relative value scales have the effect of influencing fees charged by obstetrician-gynecologists. The consent agreement with the FTC states that it is for settlement purposes only and does not constitute an admission by the College of the charges in the complaint or that the law has been violated.

In accordance with the provisions of the FTC's order, you are to cease using and to return all copies of any College relative value scale in your possession.

The proper mailing address is:

American College of Obstetricians and Gynecologists  
 1 East Wacker Drive  
 Chicago, Illinois 60601  
 Attention:

Copies of the F.T.C.'s complaint and order are enclosed.

Sincerely,

\_\_\_\_\_  
 President

APPENDIX B

Commissioner  
 Medical Services Administration  
 Social and Rehabilitation Service  
 Department of Health, Education, and  
 Welfare  
 330 C Street, S.W.  
 Washington, DC 20201

Deputy Assistant Secretary for  
 Health Resources and Programs  
 Department of Defense  
 Washington, DC 20301

Commissioner of Social Security  
 Department of Health, Education,

Directorate  
 OCHAMPUS

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and Welfare  
6401 Security Boulevard  
Baltimore, MD 21235

Department of Defense  
Washington, DC 20301

National Association of  
Blue Shield Plans  
211 East Chicago Avenue  
Chicago, IL 60611

OCHAMPUS  
Department of Defense  
Denver, CO 80240

Health Application Systems  
1633 Bayshore Highway  
Burlingame, CA 94010

Blue Cross of Southern California  
Box 27747  
4777 Sunset Boulevard  
Los Angeles, CA 90027

Blue Cross and Blue Shield of Alabama  
930 S. 20th Street  
Birmingham, AL 35298

Blue Cross of Northern California  
1950 Franklin Street  
Oakland, CA 94659

Blue Cross of Arizona, Inc.  
321 W. Indian School Road  
Box 13466  
Phoenix, AZ 85002

Blue Shield of California  
2 North Point  
San Francisco, CA 94113

Arizona Blue Shield Medical  
Service  
321 W. Indian School Road  
Box 13466  
Phoenix, AZ 85002

Colorado Hospital Service - BC  
244 University Boulevard  
Denver, CO 80206

Arkansas Blue Cross and Blue  
Shield, Inc.  
601 Gaines Street  
Box 2181  
Little Rock, AR 72203

Colorado Medical Service, Inc.-BS  
244 University Boulevard  
Denver, CO 80206

Connecticut Medical Service,  
Inc.  
221 Whitney Avenue  
New Haven, CT 06509

Connecticut Blue Cross, Inc.  
Box 504  
370 Bassett Road  
North Haven, CT 06473

Blue Cross and Blue Shield of Delaware,  
Inc.  
201 W. 14th Street  
Box 1991  
Wilmington, DE 19899

Hawaii Medical Service Association  
1504 Kapiolani Boulevard  
Box 860  
Honolulu, HI 96808 BS

Group Hospitalization, Inc. BC  
550 12th Street, S.W.  
Washington, DC 20024

Blue Cross of Idaho, Inc.  
1501 Federal Way  
Box 7408  
Boise, ID 83707

Medical Service of the District  
of Columbia BS  
550 12th Street, S.W.

North Idaho District Medical  
Service Bureau, Inc. BS  
1602 21st Avenue

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Washington, DC 20024

Box 1106  
Lewiston, ID 83501

Blue Cross of Florida, Inc.  
532 Riverside Avenue  
Box 1798  
Jacksonville, FL 32201

Illinois Hospital and Health BC  
Service, Inc.  
227 N. Wyman Street  
Rockford, IL 61101

Blue Shield of Florida, Inc.  
532 Riverside Avenue  
Box 1798  
Jacksonville, FL 32201

Hospital Service Corporation-BC  
233 North Michigan Avenue  
Box 1364  
Chicago, IL 60601

Blue Cross of Georgia/Atlanta  
Inc.  
1010 West Peachtree St., N.W.  
Box 4445  
Atlanta, GA 30302

Illinois Medical Service - BS  
233 North Michigan Avenue  
Chicago, IL 60601

Blue Cross of  
Georgia/Columbus Inc.  
2357 Warm Springs Road  
Box 1520  
Columbus, GA 31902

Blue Cross of Indiana  
120 W. Market Street  
Indianapolis, IN 46204

Blue Shield of Georgia/Atlanta  
Inc.  
1010 West Peachtree St., N.W.  
Box 4445  
Atlanta, GA 30302

Mutual Medical Insurance Inc. BS  
120 W. Market Street  
Indianapolis, IN 46204

Blue Shield of  
Georgia/Columbus Inc.  
2357 Warm Springs Road  
Box 1520  
Columbus, GA 31902

Blue Cross of Iowa  
Liberty Building  
Sixth Street & Grand Avenue  
Des Moines, IA 50307

Blue Shield of Iowa  
Liberty Building  
Des Moines, IA 50307

Blue Cross of Michigan  
600 Lafayette E.  
Detroit, MI 48226

Kansas Hospital Service  
Association, Inc.  
1133 Topeka Avenue  
Box 239  
Topeka, KS 66601

Blue Shield of Michigan  
600 Lafayette E.  
Detroit, MI 48226

Kansas Blue Shield  
1133 Topeka Avenue  
Box 239  
Topeka, KS 66601

Blue Cross and Blue Shield  
of Minnesota  
3535 Blue Cross Road  
Box 3560  
St. Paul, MN 55165



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Blue Cross Hospital Plan Inc. 3101 Bardstown Road Louisville, KY 40205	Blue Cross and Blue Shield of Minnesota 2344 Nicollet Avenue Minneapolis, MN 55404
Kentucky Physicians' Mutual, Inc. 3101 Bardstown Road Louisville, KY 40205	Blue Cross and Blue Shield of Mississippi, Inc. 530 E. Woodrow Wilson Drive Box 1043 Jackson, MS 39205
Blue Cross of Louisiana 10225 Florida Boulevard Box 15699 Baton Rouge, LA 70815	Blue Cross of Kansas City 3637 Broadway Box 169 Kansas City, MO 64141
Hospital Service Association of New Orleans BC 2026 St. Charles Avenue New Orleans, LA 70130	Blue Cross Hospital Service, Inc. of Missouri 1430 Olive Street St. Louis, MO 63103
Maine Blue Cross and Blue Shield 110 Free Street Portland, ME 04101	Blue Shield of Kansas City 3637 Broadway Box 169 Kansas City, MO 64141
Blue Cross of Maryland 700 E. Joppa Road Box 9836 Towson, MD 21204	St. Louis Blue Shield 5775 Campus Parkway Hazelwood, MO 63042
Blue Shield of Maryland, Inc. 700 E. Joppa Road Towson, MD 21204	Blue Cross of Montana 3360 10th Avenue S. Great Falls, MT 59405
Blue Cross of Massachusetts 133 Federal Street Boston, MA 02106	Montana Physicians' Service-BS 404 Fuller Avenue Box 1677 Helena, MT 59601
Blue Cross and Blue Shield of South Carolina I-20 East at Alpine Road Columbia, SC 29219	Blue Cross of Virginia 2015 Staples Mill Road Box 27401 Richmond, VA 23279
Blue Cross of Western Iowa and South Dakota Third & Pierce Streets Box 1677 Sioux City, IA 51102	Blue Cross of Southwestern Virginia 1212 Third Street, S.W. Box 2770 Roanoke, VA 24001
South Dakota Medical Service, Inc. 711 N. Lake Avenue Sioux Falls, SD 57104	Blue Shield of Virginia 2015 Staples Mill Road Box 27401 Richmond, VA 23279

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Blue Cross-Blue Shield of Tennessee 801 Pine Street Chattanooga, TN 37402	Blue Shield of Southwestern Virginia 1212 Third Street, S.W. Box 2770 Roanoke, VA 24001
Kitsap Physicians' Service 820 Pacific Avenue Box 339 Bremerton, WA 98310	Associated Hospitals, Inc. 401 Federal Street Box 131 Bluefield, WV 24701
Blue Cross Hospital Service, Inc. Commerce Square Box 1343 Charleston, WV 25325	Parkersburg Hospital Service, Inc. 203 Union Trust Building Box 1948 Parkersburg, WV 26101
West Virginia Hospital Service Inc. 20th & Chapline Streets Wheeling, WV 26003	Surgical Service, Inc. Commercial Bank Building Box 131 Bluefield, WV 24701
Blue Shield of Southern West Virginia, Inc. Commerce Square Box 1353 Charleston, WV 25325	Medical-Surgical Service, Inc. Union National Bank Building Clarksburg, WV 26301
Morgantown Medical-Surgical Service, Inc. 265 High Street Morgantown, WV 26505	Memphis Hospital Service and Surgical Association, Inc. 85 N. Danny Thomas Boulevard Box 98 Memphis, TN 38101
West Virginia Medical Service Inc. 20th & Chapline Streets Box 6246 Wheeling, WV 26003	Group Hospital Service, Inc. Main at N. Central Expressway Dallas, TX 75201
Associated Hospital Service, Inc. 4115 N. Teutonia Avenue Box 2025 Milwaukee, WI 53201	Group Life and Health Insurance Co. Main at N. Central Expressway Dallas, TX 75201
Wisconsin Physicians' Service 330 E. Lakeside Street Box 1109 Madison, WI 53701	Blue Cross of Utah 2455 Parley's Way Box 270 Salt Lake City, UT 84110
Surgical Care, The Blue Shield Plan of the Medical Society of Milwaukee County 756 N. Milwaukee Street Milwaukee, WI 53202	Blue Shield of Utah 2455 Parley's Way Box 270 Salt Lake City, UT 84110

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Blue Cross of Wyoming 4020 House Avenue Box 2266 Cheyenne, WY 82001	Blue Shield of Wyoming 4020 House Avenue Box 2266 Cheyenne, WY 82001
Genesee Valley Medical Care, Inc. 41 Chestnut Street Rochester, NY 14647	Medical Mutual of Cleveland, Inc. 2060 E. Ninth Street Cleveland, OH 41115
Blue Shield of Central New York, Inc. 344 S. Warren Street Syracuse, NY 13202	Ohio Medical Indemnity, Inc. 6740 N. High Street Worthington, OH 43085
Medical and Surgical Care, Inc. 5 Hopper Street Utica, NY 13501	Blue Cross and Blue Shield of Oklahoma 1215 S. Boulder Avenue Box 3283 Tulsa, OK 74102
Blue Cross and Blue Shield of North Carolina P. O. Box 2291 1830 Chapel Hill-Durham Blvd. Durham, NC 27702	Blue Cross of Oregon 100 S.W. Market Street Box 1271 Portland, OR 97207
Blue Cross of North Dakota 301 S. Eighth Street Fargo, ND 58102	Oregon Physicians' Service 619 S.W. 11th Avenue Box 1071 Portland, OR 97207
Blue Shield of North Dakota 301 S. Eighth Street Fargo, ND 58102	Blue Cross of Lehigh Valley 1221 Hamilton Street Allentown, PA 18102
Blue Cross Hospital Plan, Inc. 201 Ninth Street, N.W. Canton, OH 44702	Capital Blue Cross 100 Pine Street Harrisburg, PA 17101
Blue Cross of Southwest Ohio 1351 William Howard Taft Rd. Cincinnati, OH 45206	Blue Cross of Greater Philadelphia 1333 Chestnut Street Philadelphia, PA 19107
Blue Cross of Northeast Ohio 2066 E. Ninth Street Cleveland, OH 44115	Blue Cross of Western Pennsylvania 1 Smithfield Street Pittsburgh, PA 15222
Blue Cross of Central Ohio 174 E. Long Street Columbus, OH 43215	Blue Cross of Northeastern Pennsylvania 15 S. Franklin Street Wilkes-Barre, PA 18701
Blue Cross of Lima, Ohio 7 Public Square	Pennsylvania Blue Shield Blue Shield Building

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Box 1046  
Lima, OH 45802

Camp Hill, PA 17011

Blue Cross of Northwest Ohio, Inc.  
3737 Sylvania Avenue  
Box 943  
Toledo, OH 43656

Blue Cross and Blue Shield of Rhode  
Island  
Box 1298  
444 Westminster Mall  
Providence, RI 02901

Blue Cross of Nebraska  
Box 3248  
Main P.O. Station  
Omaha, NE 68103

Chautauqua Region Hospital  
Service Corporation  
306 Spring Street  
Box 1119  
Jamestown, NY 14701

Blue Shield of Nebraska  
Box 3248  
Main P.O. Station  
Omaha, NE 68103

Associated Hospital Service  
of New York  
622 Third Avenue  
New York, NY 10017

Nevada Blue Shield  
3660 Baker Lane  
Reno, NV 89502

Rochester Hospital Service  
Corporation  
41 Chestnut Street  
Rochester, NY 14647

New Hampshire-Vermont Hospitalization  
Service - BC  
2 Pillsbury Street  
Concord, NH 03301

Blue Cross of Central New York, Inc.  
344 S. Warren Street  
Box 271  
Syracuse, NY 13201

New Hampshire-Vermont  
Physicians' Service  
2 Pillsbury Street  
Concord, NH 03301

Hospital Plan, Inc.  
5 Hopper Street  
Utica, NY 13501

Hospital Service Plan of New Jersey -  
BC  
33 Washington Street  
Box 420  
Newark, NJ 07101

Hospital Service Corporation of Jefferson  
County  
158 Stone Street  
Watertown, NY 13601

Medical-Surgical Plan of New Jersey -  
BS  
33 Washington Street  
Newark, NJ 07102

Blue Shield of Northeastern New York,  
Inc.  
Box 8650  
Albany, NY 12208

New Mexico Blue Cross and Blue Shield,  
Inc.  
12800 Indian School Road N.E.  
Albuquerque, NM 87112

Blue Shield of Western New York, Inc.  
298 Main Street  
Buffalo, NY 14202

Blue Cross of Northeastern New York,  
Inc.

Chautauqua Region Medical Service, Inc.

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1251 New Scotland Road  
Box 8650  
Albany, NY 12208

306 Spring Street  
Jamestown, NY 14701

Blue Cross of Western New  
York, Inc.  
298 Main Street  
Buffalo, NY 14202

United Medical Service, Inc.  
2 Park Avenue  
New York, NY 10016

Blue Cross of Washington-  
Alaska, Inc.  
15700 Dayton Avenue, North  
Seattle, WA 98133

California Physicians' Service  
P. O. Box 7608  
San Francisco, CA 94120

The Indiana State Medical  
Association  
3935 North Meridian Street  
Indianapolis, IN 46208

Colorado Medical Service, Inc.  
244 University Blvd.  
Denver, CO 80206

Continental Service Life & Health  
Insurance Company  
Box 3397  
5353 Florida Boulevard  
Baton Rouge, LA 70821

Connecticut General Life Insurance  
Company  
Hartford, CT 06115

Blue Cross & Blue Shield of  
Greater New York  
622 3rd Avenue  
New York, NY 10016

Medical Association of Georgia  
938 Peachtree Street, N.E.  
Atlanta, GA 30309

Missouri Medical Service  
5775 Campus Parkway  
Hazelwood, MO 63042

Mississippi State Medical  
Association  
735 Riverside Drive  
Jackson, MS 39216

Washington Physicians' Service  
220 West Harrison Street  
Seattle, WA 98119

Medical-Surgical Care, Inc.  
203 Union Trust Building  
Box 1948  
Parkersburg, WV 26101

New York Life Insurance Company  
51 Madison Avenue  
New York, NY 10010

Metropolitan Life Insurance Company  
1 Madison Avenue  
New York, NY 10010

Prudential Insurance Company  
of America  
Prudential Plaza  
Newark, NJ 07101

The Travelers Insurance  
Company  
1 Tower Square  
Hartford, CT 06115

Continental Assurance Company  
CNA Plaza  
Chicago, IL 60605

Aetna Life Insurance Company  
151 Farmington Avenue  
Hartford, CT 06115

Bankers Life Company

Employers Life Insurance

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711 High Street  
Des Moines, IA 50307

Company of Wausau  
200 Westwood Drive  
Wausau, WI 54401

Nationwide Life Insurance Company  
246 North High Street  
Columbus, OH 43216

Colonial Penn Life Insurance Company  
5 Penn Center Plaza  
Philadelphia, PA 19103

Equitable Life Assurance  
Society of the U.S.  
1285 Avenue of the Americas  
New York, NY 10019

Firemen's Fund Insurance  
Company  
3333 California Street  
San Francisco, CA 94118

Reliance Insurance Group  
4 Penn Center Plaza  
Philadelphia, PA 19103

Zurich Life Insurance Company  
111 West Jackson Boulevard  
Chicago, IL 60604

Occidental Life Insurance Company of  
California  
Box 2101 Terminal Annex  
Los Angeles, CA 90054

Mutual of Omaha Insurance Company  
Dodge at 33rd Street  
Omaha, NE 68131

Blue Shield of Massachusetts,  
Inc.  
133 Federal Street  
Boston, MA 02106

Blue Cross of Eastern Ohio, Inc.  
2400 Market Street  
Youngstown, OH 44507

Nevada State Medical Association  
3660 Baker Lane  
Reno, NV 89502

Complaint

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IN THE MATTER OF

THE AMERICAN ACADEMY OF ORTHOPAEDIC  
SURGEONSCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION ACT*Docket C-2856. Complaint, Dec. 14, 1976 — Decision, Dec. 14, 1976*

Consent order requiring a Chicago, Ill., professional association, among other things, to cease publishing, promulgating and participating in the development of relative value scales which have the effect of establishing prices for medical and surgical services. Respondent is required to permanently cancel, repeal, abrogate and withdraw any and all relative value scales heretofore developed or disseminated and send copies of this order to association members and certain third-party payers together with a request for the return of all copies of relative value scales in their possession.

*Appearances*

For the Commission: *Lawrence E. Gray* and *Edward W. Abramowitz*.  
For the respondent: *Hinshaw, Culbertson, Moelmann, Hoban & Fuller*, Chicago, Illinois.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the American Academy of Orthopaedic Surgeons has violated the provisions of Section 5 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 as follows:

PARAGRAPH 1. Respondent, The American Academy of Orthopaedic Surgeons ("AAOS"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 430 North Michigan Ave., Chicago, Illinois.

PAR. 2. Membership in AAOS is composed of approximately 6,200 Fellows who are certified by the American Board of Orthopaedic Surgery and have been engaged in the exclusive practice of orthopaedic surgery for a minimum period of three years subsequent to completion of their period of training. The Fellows elect the Officers and the Board of Directors which manage the affairs of AAOS.

PAR. 3. Orthopaedic surgeons are licensed physicians who specialize in the investigation, preservation, restoration and development of the

form and function of the extremities, spine and associated structures by medical, surgical and physical methods. They are generally engaged in the private practice of medicine and surgery and derive substantial portions of their professional income from fees for medical and surgical treatment charged directly to patients or to insurers.

PAR. 4. The acts and practices of respondent AAOS are in or affect commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. AAOS prepared, published, and circulated to its members and others in 1962 a booklet entitled "Relative Value Systems for Orthopaedic Procedures," and in 1972 a booklet entitled "Relative Values of Orthopaedic Services," both of which set forth comparative numerical values for surgical and medical procedures and other services performed by orthopaedic surgeons. These values are stated in non-monetary units; each value is convertible into a monetary fee by the application of a dollar conversion factor to the basic unit.

PAR. 6. The preparation, publication, and circulation by AAOS of relative values have the effect of establishing, maintaining, or otherwise influencing fees which orthopaedic surgeons charge for their professional services, and are in violation of Section 5 of the Federal Trade Commission Act, as amended.

#### 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 respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 5 of the Federal Trade Commission Act; and

The respondent 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 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 of the charges in Paragraph Six of the complaint or that the law has been violated, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having provisionally accepted same and placed it 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 the Commission's Rules, now in further conformity with the procedure



provided by Section 2.34 of its Rules hereby issues its decision in disposition of the proceeding against the above-named respondent, makes the following jurisdictional findings, and enters the following findings and order:

1. Respondent, The American Academy of Orthopaedic Surgeons ("AAOS"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 430 North Michigan Ave., Chicago, Illinois.

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

#### ORDER

##### I

A. The term "relative value scale" means any list or compilation of surgical and/or medical procedures and/or services which sets forth comparative numerical values for such procedures and/or services, without regard to whether those values are expressed in monetary or non-monetary terms.

B. The term "AAOS" means the American Academy of Orthopaedic Surgeons.

C. The term "effective date of this order" means the date of service of this order.

##### II

*It is ordered*, That AAOS, its successors, or assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, shall:

A. Cease and desist from directly or indirectly initiating, originating, developing, publishing, or circulating the whole or any part of any proposed or existing relative value scale(s);

B. Cease and desist from directly or indirectly advising in favor of or against the use of, or contributing to the whole or any part of any proposed or existing relative value scale(s); *provided, however*, that nothing contained herein shall prohibit AAOS from furnishing testimony to any government body, committee, or instrumentality, or from furnishing to any third party or government body, committee, or instrumentality such information as may be requested; to the extent, however, that such information or testimony may bear directly or indirectly on compensation levels for orthopaedic services or proce-

dures, it shall be limited to historical data, free of editing or interpretation, and shall be completely described as to methodology.

C. Permanently cancel, repeal, abrogate, and withdraw any and all relative value scales which it has heretofore developed, published, circulated, or disseminated;

D. Within thirty (30) days after the effective date of this order, distribute by first class mail a copy of the Commission's complaint and order in this matter, as well as a letter, in the form shown in Appendix "A" to this order, to each of its Fellows and to each of the third-party payers and others listed in Appendix "B" to this order, instructing such third-party payers and others to return to AAOS all copies of AAOS relative value scales in their possession.

## III

*It is further ordered,* That AAOS shall notify the Commission at least thirty (30) days prior to any proposed change in its organization which might affect compliance obligations under this order, such as, but not limited to, dissolution, the emergence of a successor corporation, and the creation and/or dissolution of subsidiaries.

## IV

*It is further ordered,* That AAOS shall, within sixty (60) days after the effective date of this order, file with the Commission a written report showing in detail the manner and form of its compliance with each of the provisions of the order.

## V

Nothing in this order shall be construed to exempt The American Academy of Orthopaedic Surgeons from complying with the antitrust laws or the Federal Trade Commission Act. The fact that any activity is not prohibited by this order shall not bar a challenge to it under such laws.

## APPENDIX A

## (AAOS LETTERHEAD)

DATE \_\_\_\_\_

To: Fellows of the American Academy of Orthopaedic Surgeons and other Recipients of AAOS Relative Value Scales.

As you may be aware, the Federal Trade Commission has been conducting inquiries into various components of health care, including

the relative value scale activities of the Academy. The Board of Directors of the Academy no longer desires to continue such activities and has discontinued them. Your Board of Directors has concluded that it is more desirable to utilize Academy funds for its intended educational and research activities rather than continue involvement in this inquiry. Hence, it has entered into an agreement with the FTC to formalize the discontinuance of its relative value scales.

This agreement resulted in the issuance by the Federal Trade Commission on [date], of a Complaint and the entry of a Consent Order which requires, in essence, that the Academy:

- (a) stop publishing and participating in the development of relative value scales;
- (b) withdraw the relative value scales it has already published;
- (c) distribute a copy of the complaint and order to every AAOS relative value scale recipient; and
- (d) instruct all recipients of AAOS value scales to return them.

The Federal Trade Commission's complaint alleges basically that the Academy's relative value scales have the effect of influencing fees charged by orthopaedic surgeons. The Consent Agreement with the FTC states that it is for settlement purposes only and does not constitute an admission by the Academy of the charges in the complaint or that the law has been violated.

In accordance with the provisions of the FTC's Order, you are instructed to cease using and to promptly return all copies of any Academy relative value scale in your possession.

The proper mailing address is:

American Academy of Orthopaedic Surgeons  
430 North Michigan Avenue  
Chicago, Illinois 60611

Copies of the FTC's complaint and order are enclosed.

Sincerely,

---

President

#### APPENDIX B

Commissioner  
Medical Services Administration  
Social and Rehabilitation Service  
Department of Health, Education, and  
Welfare  
330 C Street, S.W.

Deputy Assistant Secretary for  
Health Resources and Programs  
Department of Defense  
Washington, DC 20301

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Washington, DC 20201

Commissioner of Social Security  
 Department of Health, Education,  
 and Welfare  
 6401 Security Boulevard  
 Baltimore, MD 21235

Directorate  
 OCHAMPUS  
 Department of Defense  
 Washington, DC 20301

National Association of  
 Blue Shield Plans  
 211 East Chicago Avenue  
 Chicago, IL 60611

OCHAMPUS  
 Department of Defense  
 Denver, CO 80240

Health Application Systems  
 1633 Bayshore Highway  
 Burlingame, CA 94010

Blue Cross of Southern California  
 Box 27747  
 4777 Sunset Boulevard  
 Los Angeles, CA 90027

Blue Cross and Blue Shield of Alabama  
 930 S. 20th Street  
 Birmingham, AL 35298

Blue Cross of Northern California  
 1950 Franklin Street  
 Oakland, CA 94659

Blue Cross of Arizona, Inc.  
 321 W. Indian School Road  
 Box 13466  
 Phoenix, AZ 85002

Blue Shield of California  
 2 North Point  
 San Francisco, CA 94113

Arizona Blue Shield Medical  
 Service  
 321 W. Indian School Road  
 Box 13466  
 Phoenix, AZ 85002

Colorado Hospital Service - BC  
 244 University Boulevard  
 Denver, CO 80206

Arkansas Blue Cross and Blue  
 Shield, Inc.  
 601 Gaines Street  
 Box 2181  
 Little Rock, AR 72203

Colorado Medical Service, Inc. BS  
 244 University Boulevard  
 Denver, CO 80206

Connecticut Medical Service, Inc.  
 221 Whitney Avenue  
 New Haven, CT 06509

Connecticut Blue Cross, Inc.  
 Box 504  
 370 Bassett Road  
 North Haven, CT 06473

Blue Cross and Blue Shield of Delaware,  
 Inc.  
 201 W. 14th Street  
 Box 1991  
 Wilmington, DE 19899

Hawaii Medical Service Association  
 1504 Kapiolani Boulevard  
 Box 860  
 Honolulu, HI 96808 BS

Group Hospitalization, Inc. BC  
 550 12th Street, S.W.  
 Washington, DC 20024

Blue Cross of Idaho, Inc.  
 1501 Federal Way  
 Box 7408  
 Boise, ID 83707

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Medical Service of the District of Columbia BS 550 12th Street, S.W. Washington, DC 20024	North Idaho District Medical Service Bureau, Inc. BS 1602 21st Avenue Box 1106 Lewiston, ID 83501
Blue Cross of Florida, Inc. 532 Riverside Avenue Box 1798 Jacksonville, FL 32201	Illinois Hospital and Health BC Service, Inc. 227 N. Wyman Street Rockford, IL 61101
Blue Shield of Florida, Inc. 532 Riverside Avenue Box 1798 Jacksonville, FL 32201	Hospital Service Corporation BC 233 North Michigan Avenue Box 1364 Chicago, IL 60601
Blue Cross of Georgia/Atlanta Inc. 1010 West Peachtree St., N.W. Box 4445 Atlanta, GA 30302	Illinois Medical Service - BS 233 North Michigan Avenue Chicago, IL 60601
Blue Cross of Georgia/Columbus Inc. 2357 Warm Springs Road Box 1520 Columbus, GA 31902	Blue Cross of Indiana 120 W. Market Street Indianapolis, IN 46204
Blue Shield of Georgia/Atlanta Inc. 1010 West Peachtree St., N.W. Box 4445 Atlanta, GA 30302	Mutual Medical Insurance Inc. BS 120 W. Market Street Indianapolis, IN 46204
Blue Shield of Georgia/Columbus Inc. 2357 Warm Springs Road Box 1520 Columbus, GA 31902	Blue Cross of Iowa Liberty Building Sixth Street & Grand Avenue Des Moines, IA 50307
Blue Shield of Iowa Liberty Building Des Moines, IA 50307	Blue Cross of Michigan 600 Lafayette E. Detroit, MI 48226
Kansas Hospital Service Association, Inc. 1133 Topeka Avenue Box 239 Topeka, KS 66601	Blue Shield of Michigan 600 Lafayette E. Detroit, MI 48226
Kansas Blue Shield 1133 Topeka Avenue Box 239 Topeka, KS 66601	Blue Cross and Blue Shield of Minnesota 3535 Blue Cross Road Box 3560 St. Paul, MN 55165

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Blue Cross Hospital Plan Inc. 3101 Bardstown Road Louisville, KY 40205	Blue Cross and Blue Shield of Minnesota 2344 Nicollet Avenue Minneapolis, MN 55404
Kentucky Physicians' Mutual, Inc. 3101 Bardstown Road Louisville, KY 40205	Blue Cross and Blue Shield of Mississippi, Inc. 530 E. Woodrow Wilson Drive Box 1043 Jackson, MS 39205
Blue Cross of Louisiana 10225 Florida Boulevard Box 15699 Baton Rouge, LA 70815	Blue Cross of Kansas City 3637 Broadway Box 169 Kansas City, MO 64141
Hospital Service Association of New Orleans BC 2026 St. Charles Avenue New Orleans, LA 70130	Blue Cross Hospital Service, Inc. of Missouri 1430 Olive Street St. Louis, MO 63108
Maine Blue Cross and Blue Shield 110 Free Street Portland, ME 04101	Blue Shield of Kansas City 3637 Broadway Box 169 Kansas City, MO 64141
Blue Cross of Maryland 700 E. Joppa Road Box 9836 Towson, MD 21204	St. Louis Blue Shield 5775 Campus Parkway Hazelwood, MO 63042
Blue Shield of Maryland, Inc. 700 E. Joppa Road Towson, MD	Blue Cross of Montana 3360 10th Avenue S. Great Falls, MT 59405
Blue Cross of Massachusetts 133 Federal Street Boston, MA 02106	Montana Physicians' Service-BS 404 Fuller Avenue Box 1677 Helena, MT 59601
Blue Cross and Blue Shield of South Carolina I-20 East at Alpine Road Columbia, SC 29219	Blue Cross of Virginia 2015 Staples Mill Road Box 27401 Richmond, VA 23279
Blue Cross of Western Iowa and South Dakota Third & Pierce Streets Box 1677 Sioux City, IA 51102	Blue Cross of Southwestern Virginia 1212 Third Street, S.W. Box 2770 Roanoke, VA 24001
South Dakota Medical Service, Inc. 711 N. Lake Avenue	Blue Shield of Virginia 2015 Staples Mill Road Box 27401

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Sioux Falls, SD 57104	Richmond, VA 23279
Blue Cross-Blue Shield of Tennessee 801 Pine Street Chattanooga, TN 37402	Blue Shield of Southwestern Virginia 1212 Third Street, S.W. Box 2770 Roanoke, VA 24001
Kitsap Physicians' Service 820 Pacific Avenue Box 339 Bremerton, WA 98310	Associated Hospitals, Inc. 401 Federal Street Box 131 Bluefield, WV 24701
Blue Cross Hospital Service, Inc. Commerce Square Box 1343 Charleston, WV 25325	Parkersburg Hospital Service, Inc. 203 Union Trust Building Box 1948 Parkersburg, WV 26101
West Virginia Hospital Service, Inc. 20th & Chapline Streets Wheeling, WV 26003	Surgical Service, Inc. Commercial Bank Building Box 131 Bluefield, WV 24701
Blue Shield of Southern West Virginia, Inc. Commerce Square Box 1353 Charleston, WV 25325	Medical-Surgical Service, Inc. Union National Bank Building Clarksburg, WV 26301
Morgantown Medical-Surgical Service, Inc. 265 High Street Morgantown, WV 26505	Memphis Hospital Service and Surgical Association, Inc. 85 N. Danny Thomas Boulevard Box 98 Memphis, TN 38101
West Virginia Medical Service Inc. 20th & Chapline Streets Box 6246 Wheeling, WV 26003	Group Hospital Service, Inc. Main at N. Central Expressway Dallas, TX 75201
Associated Hospital Service, Inc. 4115 N. Teutonia Avenue Box 2025 Milwaukee, WI 53201	Group Life and Health Insurance Co. Main at N. Central Expressway Dallas, TX 75201
Wisconsin Physicians' Service 330 E. Lakeside Street Box 1109 Madison, WI 53701	Blue Cross of Utah 2455 Parley's Way Box 270 Salt Lake City, UT 84110
Surgical Care, The Blue Shield Plan of the Medical Society of Milwaukee County 756 N. Milwaukee Street	Blue Shield of Utah 2455 Parley's Way Box 270 Salt Lake City, UT 84110

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Milwaukee, WI 53202

Blue Cross of Wyoming  
4020 House Avenue  
Box 2266  
Cheyenne, WY 82001

Genesee Valley Medical Care, Inc.  
41 Chestnut Street  
Rochester, NY 14647

Blue Shield of Central New York, Inc.  
344 S. Warren Street  
Syracuse, NY 13202

Medical and Surgical Care, Inc.  
5 Hopper Street  
Utica, NY 13501

Blue Cross and Blue Shield of  
North Carolina  
P. O. Box 2291  
1830 Chapel Hill-Durham Blvd.  
Durham, NC 27702

Blue Cross of North Dakota  
301 S. Eighth Street  
Fargo, ND 58102

Blue Shield of North Dakota  
301 S. Eighth Street  
Fargo, ND 58102

Blue Cross Hospital Plan, Inc.  
201 Ninth Street, N.W.  
Canton, OH 44702

Blue Cross of Southwest Ohio  
1351 William Howard Taft Rd.  
Cincinnati, OH 45206

Blue Cross of Northeast Ohio  
2066 E. Ninth Street  
Cleveland, OH 44115

Blue Cross of Central Ohio  
174 E. Long Street  
Columbus, OH 43215

Blue Shield of Wyoming  
4020 House Avenue  
Box 2266  
Cheyenne, WY 82001

Medical Mutual of Cleveland, Inc.  
2060 E. Ninth Street  
Cleveland, OH 41115

Ohio Medical Indemnity, Inc.  
6740 N. High Street  
Worthington, OH 43085

Blue Cross and Blue Shield of Oklahoma  
1215 S. Boulder Avenue  
Box 3283  
Tula, OK 74102

Blue Cross of Oregon  
100 S.W. Market Street  
Box 1271  
Portland, OR 97207

Oregon Physicians' Service  
619 S.W. 11th Avenue  
Box 1071  
Portland, OR 97207

Blue Cross of Lehigh Valley  
1221 Hamilton Street  
Allentown, PA 18102

Capital Blue Cross  
100 Pine Street  
Harrisburg, PA 17101

Blue Cross of Greater  
Philadelphia  
1333 Chestnut Street  
Philadelphia, PA 19107

Blue Cross of Western  
Pennsylvania  
1 Smithfield Street  
Pittsburgh, PA 15222

Blue Cross of Northeastern  
Pennsylvania  
15 S. Franklin Street  
Wilkes-Barre, PA 18701



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Blue Cross of Lima, Ohio 7 Public Square Box 1046 Lima, OH 45802	Pennsylvania Blue Shield Blue Shield Building Camp Hill, PA 17011
Blue Cross of Northwest Ohio, Inc. 3737 Sylvania Avenue Box 943 Toledo, OH 43656	Blue Cross and Blue Shield of Rhode Island Box 1298 444 Westminster Mall Providence, RI 02901
Blue Cross of Nebraska Box 3248 Main P.O. Station Omaha, NE 68103	Chautauqua Region Hospital Service Corporation 306 Spring Street Box 1119 Jamestown, NY 14701
Blue Shield of Nebraska Box 3248 Main P.O. Station Omaha, NE 68103	Associated Hospital Service of New York 622 Third Avenue New York, NY 10017
Nevada Blue Shield 3660 Baker Lane Reno, NV 89502	Rochester Hospital Service Corporation 41 Chestnut Street Rochester, NY 14647
New Hampshire-Vermont Hospitalization Service - BC 2 Pillsbury Street Concord, NH 03301	Blue Cross of Central New York, Inc. 344 S. Warren Street Box 271 Syracuse, NY 13201
New Hampshire-Vermont Physicians' Service 2 Pillsbury Street Concord, NH 03301	Hospital Plan, Inc. 5 Hopper Street Utica, NY 13501
Hospital Service Plan of New Jersey - BC 33 Washington Street Box 420 Newark, NJ 07101	Hospital Service Corporation of Jefferson County 158 Stone Street Watertown, NY 13601
Medical-Surgical Plan of New Jersey - BS 33 Washington Street Newark, NJ	Blue Shield of Northeastern New York, Inc. Box 8650 Albany, NY 12208
New Mexico Blue Cross and Blue Shield, Inc. 12800 Indian School Road N.E. Albuquerque, NM 87112	Blue Shield of Western New York, Inc. 298 Main Street Buffalo, NY 14202

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- |  |  |
|--|--|
| Blue Cross of Northeastern New York, Inc.<br>1251 New Scotland Road<br>Box 8650<br>Albany, NY 12208                | Chautauqua Region Medical Service, Inc.<br>306 Spring Street<br>Jamestown, NY 14701          |
| Blue Cross of Western New York, Inc.<br>298 Main Street<br>Buffalo, NY 14202                                       | United Medical Service, Inc.<br>2 Park Avenue<br>New York, NY 10016                          |
| Blue Cross of Washington-Alaska, Inc.<br>15700 Dayton Avenue, North<br>Seattle, WA 98133                           | California Physicians' Service<br>P. O. Box 7608<br>San Francisco, CA 94120                  |
| The Indiana State Medical Association<br>3935 North Meridian Street<br>Indianapolis, IN 46208                      | Colorado Medical Service, Inc.<br>244 University Blvd.<br>Denver, CO 80206                   |
| Continental Service Life & Health Insurance Company<br>Box 3397<br>5353 Florida Boulevard<br>Baton Rouge, LA 70821 | Connecticut General Life Insurance Company<br>Hartford, CT 06115                             |
| Blue Cross & Blue Shield of Greater New York<br>622 3rd Avenue<br>New York, NY 10016                               | Medical Association of Georgia<br>938 Peachtree Street, N.E.<br>Atlanta, GA 30309            |
| Missouri Medical Service<br>5775 Campus Parkway<br>Hazelwood, MO 63042   | Mississippi State Medical Association<br>735 Riverside Drive<br>Jackson, MS 39216            |
| Washington Physicians' Service<br>220 West Harrison Street<br>Seattle, WA 98119                                    | Medical-Surgical Care, Inc.<br>203 Union Trust Building<br>Box 1948<br>Parkersburg, WV 26101 |
| New York Life Insurance Company<br>51 Madison Avenue<br>New York, NY 10010   | Metropolitan Life Insurance Company<br>1 Madison Avenue<br>New York, NY 10010                |
| Prudential Insurance Company of America<br>Prudential Plaza<br>Newark, NJ 07101                                    | The Travelers Insurance Company<br>1 Tower Square<br>Hartford, CT 06115                      |
| Continental Assurance Company<br>CNA Plaza   | Aetna Life Insurance Company<br>151 Farmington Avenue  |

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Chicago, IL 60605

Bankers Life Company  
711 High Street  
Des Moines, IA 50307Nationwide Life Insurance Company  
246 North High Street  
Columbus, OH 43216Equitable Life Assurance  
Society of the U.S.  
1285 Avenue of the Americas  
New York, NY 10019Reliance Insurance Group  
4 Penn Center Plaza  
Philadelphia, PA 19103Occidental Life Insurance Company of  
California  
Box 2101 Terminal Annex  
Los Angeles, CA 90054Blue Shield of Massachusetts,  
Inc.  
133 Federal Street  
Boston, MA 02106Nevada State Medical Association  
3660 Baker Lane  
Reno, NV 89502

Hartford, CT 06115

Employers Life Insurance  
Company of Wausau  
2000 Westwood Drive  
Wausau, WI 54401Colonial Penn Life Insurance Company  
5 Penn Center Plaza  
Philadelphia, PA 19103Firemen's Fund Insurance  
Company  
3333 California Street  
San Francisco, CA 94118Zurich Life Insurance Company  
111 West Jackson Boulevard  
Chicago, IL 60604Mutual of Omaha Insurance Company  
Dodge at 33rd Street  
Omaha, NE 68131Blue Cross of Eastern Ohio, Inc.  
2400 Market Street  
Youngstown, OH 44507

## IN THE MATTER OF

## HARBOR BANANA DISTRIBUTORS, INC.

MODIFYING ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION AND CLAYTON ACTS

*Docket 8795. Complaint, Jan. 12, 1973 — Modifying Order, Dec. 17, 1976*

Order modifying a previous order issued January 3, 1975, 40 F.R. 14304, 85 F.T.C. 7 (which modified the original order dated January 12, 1973, 38 F.R. 5160, 82 F.T.C. 53), by dismissing Counts I, II, and III of the complaint, eliminating the divestiture requirements regarding Charles C. McCann Company and Tradewinds Produce, Inc.

*Appearances*

For the Commission: *James T. Halverson.*

For the respondent: *Bernard Marcus, Deutsch, Kerrigan & Stiles,*  
New Orleans, La.

ORDER REOPENING PROCEEDING AND MODIFYING CEASE AND  
DESIST ORDER

On January 3, 1975, the Federal Trade Commission, pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued its modified Cease and Desist Order requiring in Paragraph II divestiture of all assets of Charles C. McCann and Tradewinds Produce, Inc. acquired by Harbor Banana Distributors, Inc.

Section 5(b) of the Federal Trade Commission Act provides that the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify or set aside, in whole or in part, any order issued by it, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require.

On September 21, 1976, the Commission issued its order to respondent to show cause why the Commission should not alter and modify the modified Cease and Desist Order issued on January 3, 1975 so as to eliminate the divestiture requirement thereof. On September 30, 1976, the Commission issued its Order Correcting Order To Show Cause. Service of both of these orders on the respondent was completed on October 4, 1976.

Respondent has not filed an answer to the Order To Show Cause during the thirty (30) day period after service thereof. In this connection, Section 3.72(b)(1) of the Commission's Procedures and Rules of Practice provides that any person not responding to the Order

Order

88 F.T.C.

To Show Cause within the time allowed may be deemed to have consented to the proposed changes.

Accordingly, *it is ordered* that the matter be reopened, and that the modified Cease and Desist Order of January 3, 1975 be altered and modified to read as follows:

## I

*It is ordered*, That Counts I, II and III of the complaint be dismissed.

## II

*It is further ordered*, That respondent Harbor Banana Distributors, Inc. shall not, for a period of ten (10) years from January 28, 1975, acquire, directly or indirectly, through subsidiaries, joint ventures, or otherwise, without the prior approval of the Federal Trade Commission, the whole or any part of the stock, share capital or assets of any concern engaged in the processing, sale or distribution of bananas.

## III

*It is further ordered*, That respondent Harbor Banana Distributors, Inc. shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its corporate organization, 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 that may affect compliance obligations arising out of this order.

## IV

*It is further ordered*, That Harbor Banana Distributors, Inc. shall, each year, on the anniversary of the date of service of this order, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which it is complying and/or has complied with Paragraph II of this order.

IN THE MATTER OF  
SOUNDTRACK CHEVELL INDUSTRIES, INC., ET AL.

DISMISSAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED  
VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

*Docket 8998. Complaint, Nov. 5, 1974 — Order, Dec. 17, 1976*

Order dismissing complaint issued against two individual respondents, Lonnie and Gene Temple, in a case involving alleged deceptive acts and practices in the talent promotion business. The complaint was dismissed for lack of public interest.

*Appearances*

For the Commission: *John J. Hemrick* and *Jim B. Brookshire*.

For the respondents: *Jerry L. Buchmeyer* and *Schuyler B. Marshall*,  
*Thompson, Knight, Simmons & Bullion*, Dallas, Texas.

ORDER DISMISSING COMPLAINT

This matter is before the Commission on the certification by the administrative law judge of a request by respondent Gene Temple that counsel be appointed to represent him in this matter. This request comes after completion of complaint counsel's case-in-chief, a similar request filed shortly before the hearing began having been denied as untimely. The administrative law judge recommends that the renewed request be granted.

Upon review of the present papers and those submitted on the numerous prior occasions since issuance of the complaint that this case had been before us, we are of the view that continuation of these proceedings would not be in the public interest. Accordingly, on our own motion, we direct that the complaint be dismissed as against the two remaining respondents, Lonnie and Gene Temple.

Commissioner Dole dissenting.

DISSENTING STATEMENT OF COMMISSIONER DOLE

I dissent from the dismissal of the complaint. I believe that further proceedings are in the public interest for the reasons indicated in the Commission's Order Denying Motions to Dismiss the Complaint as to Lonnie Temple and Gene Temple, May 11, 1976 [87 F.T.C. 1249]. Instead of dismissing the complaint, I would have granted respondent Gene Temple's request for appointed counsel.

Complaint

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IN THE MATTER OF

## INTERSTATE CHECK SYSTEMS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION AND FAIR CREDIT REPORTING ACTS*Docket C-2857. Complaint, Dec. 17, 1976 — Decision, Dec. 17, 1976*

Consent order requiring an Indianapolis, Ind., credit reporting firm, among other things to cease collecting, assembling, furnishing or utilizing consumer reports in violation of the Fair Credit Reporting Act.

*Appearances*

For the Commission: *Ronald G. McCauley* and *James S. Teborek*.  
For the respondents: *Peter Grable, Watson, Gleason & Hay*, Indianapolis, Indiana.

## COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Interstate Check Systems, Inc., a corporation, and Gerald A. McColloum, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, 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 Interstate Check Systems, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 5306 N. Keystone Ave., Indianapolis, Indiana.

Respondent Gerald A. McColloum is an officer of said corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Subsequent to April 25, 1971, in the ordinary course and conduct of their business, respondents have compiled and published lists containing, among other things, the names and street numbers of consumers, together with statements of indications that such consumers have issued forged checks, checks drawn upon nonexistent accounts, or checks which have been returned by the drawee bank because of insufficient funds or other reasons.

The information contained in the aforesaid lists concerning consumers whose names and addresses appear therein bears on said consumers' credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics and/or mode of living. Therefore, each of the aforesaid lists constitutes a series of consumer reports, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act.

Respondents are, and for some time past have been, for monetary fee, regularly engaged in the practice of assembling such information on consumers for the purpose of furnishing such lists to third parties, and regularly use and for some time past have regularly used, a means or facility of interstate commerce for the purpose of preparing and/or furnishing said lists. Therefore, respondents are a consumer reporting agency, as "consumer reporting agency" is defined in Section 603(f) of the Fair Credit Reporting Act.

PAR. 3. At the time respondents furnish the aforesaid consumer reports in list form, respondents do not have reason to believe that each person to whom the consumer reports is furnished has a legitimate business need for the information in connection with a business transaction involving each consumer reported upon, nor do respondents have reason to believe that each recipient otherwise intends to use the information for a purpose set forth in Section 604 of the Fair Credit Reporting Act. Further, the furnishing of such consumer reports is neither in response to a court order nor in accordance with the written instructions of each consumer to whom the reports relate.

Respondents, in the ordinary course and conduct of their business, as aforesaid, furnish consumer reports to persons, as "person" is defined in Section 603(b) of the Fair Credit Reporting Act, who do not have a legitimate business need or other permissible purpose to receive the consumer reports furnished to them, as required by Section 604(3) of the Act.

Therefore, by so furnishing consumer reports as described above, respondents have violated, and are violating, Section 604 of the Fair Credit Reporting Act.

PAR. 4. By and through the acts and practices described in Paragraph Three, above, respondents have failed to maintain reasonable procedures to limit the furnishing of consumer reports to the purposes listed under Section 604 of the Fair Credit Reporting Act, and have furnished consumer reports to persons under circumstances in which there are reasonable grounds for believing that such reports will not be used for the purpose listed in Section 604 of such Act. Therefore, respondents have violated, and are violating, Section 607(a) of the Fair Credit Reporting Act.



PAR. 5. The acts and practices set forth in Paragraphs Three and Four, above, were and are in violation of the Fair Credit Reporting Act, and, pursuant to Section 621(a) of that Act, said acts and practices constitute unfair or deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Fair Credit Reporting Act and the Federal Trade Commission Act; and

The respondents 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 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 thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, 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 procedures 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 Interstate Check Systems, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 5306 N. Keystone Ave., Indianapolis, Indiana.

Respondent Gerald A. McCollum is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

2. 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

*It is ordered,* That respondents Interstate Check Systems, Inc., a corporation, its successors and assigns, and its officer Gerald A. McCollum, individually and as an officer of said Interstate Check Systems, Inc., and respondents' officers, agents, representatives and employees, hereafter collectively "respondents," directly or through any corporation, subsidiary, division or other device, in connection with the collecting, preparation, assembling or furnishing of consumer reports, as "consumer report" is defined in Section 603(d) of the Fair Credit Reporting Act (Pub. Law 91-508, 15 U.S.C. §1601, *et seq.*), shall forthwith cease and desist from:

1. Furnishing any consumer report to any person unless such report is furnished:

(a) to a person whom respondent then has reason to believe intends, at the time the information is furnished, to use the information:

(1) in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(2) for employment purposes; or

(3) in connection with the underwriting of insurance involving the consumer; or

(4) in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(5) in connection with a business transaction involving each consumer reported upon; or

(b) in response to the order of a court having jurisdiction to issue such order; or

(c) in accordance with the written instructions of the consumer to whom the report relates.

2. Furnishing consumer reports in list form, unless the identity of the consumer to whom the information relates is not disclosed on such list and cannot be determined without the use of a unique identifier, such as social security number, drivers' license number, or bank account number. The identifier used must be provided by the consumer at the time of the transaction with the user.

3. Failing to maintain reasonable procedures necessary to limit the furnishing of consumer reports to the purposes listed under Section 604 of the Act, as provided by Section 607 of the Act.

*It is further ordered,* That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents

engaged in the preparation and/or furnishing of consumer reports, and that respondents secure a signed statement acknowledging receipt of said order from all such personnel.

*It is further ordered,* That respondents 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, the creation or dissolution of subsidiaries or any other change in the corporate respondent which may affect compliance obligations arising out of this order.

*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. Such notice shall include his current business address and a statement as to the nature of the business or employment in which he is engaged, as well as a description of his duties and responsibilities.

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

Commissioner Dole did not participate by reason of absence.

## Complaint

IN THE MATTER OF  
MARTIN MARIETTA CORPORATION, ET AL.

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

*Docket 9039. Complaint, June 24, 1975 — Decision, Dec. 20, 1976*

Consent orders requiring three portland cement manufacturers, Martin Marietta Corporation, Rockville, Md., Ideal Basic Industries, Inc., Denver, Colo., and OKC Corp., Dallas, Tex., among other things to offer, for a ten-year period, a point of origin price for bulk portland cement to a customer each time a delivered price is offered. Customers are given the option of furnishing or arranging transportation from the mill at the point of origin price. The Ideal order defines the point of origin price as the delivered price less the actual freight which would have been incurred to the destination. The other two orders define the point of origin price as the delivered price less the unabsorbed or average freight factor included in it. Further, the orders prohibit the exchange of price information among competitors and control of the place of use of portland cement which has been sold to a customer.

*Appearances*

For the Commission: *James C. Egan, Jr.*

For the respondents: *Harold F. Parker, Terrence C. Sheehy, J.F. Bruce and William J. Hunter, Howrey, Simon, Baker & Murchison, Washington, D.C. for Martin Marietta Corporation. Gordon Granier and Jeffrey C. Pond, Holland & Hart, Denver, Colo. for Ideal Basic Industries, Inc. Daniel McCallen, Dallas, Tex. and Edward T. Tait and Eric F. Stoer, Reed, Smith, Shaw & McClay, Washington, D.C. for OKC Corp.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above named respondents have violated and are now violating Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45), and believing that a proceeding by it in respect thereof is in the public interest, hereby issues this complaint, charging as follows:

I. DEFINITIONS

PARAGRAPH 1. For the purpose of this complaint, the following definitions shall apply:

- (a) "Portland cement" — a material which includes types I through V as specified by the American Society for Testing Materials, not including either masonry or white cement; and
- (b) "Ready mixed concrete" — a material produced by combining

portland cement, aggregates such as rock and sand, water and occasionally certain admixtures.

## II. RESPONDENTS

PAR. 2. Respondent Martin Marietta Corporation is a corporation organized, existing and doing business under the laws of the State of Maryland, with its principal office and place of business at 11300 Rockville Pike, Rockville, Maryland. In 1972, Martin Marietta Corporation had sales of portland cement of \$131,798,000.

PAR. 3. Respondent Ideal Basic Industries, Inc., is a corporation organized, existing and doing business under the laws of the State of Colorado, with its principal office and place of business at 821 17th St., Denver, Colorado. In 1972, Ideal Basic Industries, Inc., had sales of portland cement of \$146,126,871.

PAR. 4. Respondent OKC Corp. is a corporation organized, existing and doing business under the laws of the State of Delaware, with its principal office and place of business at 1949 North Stemmons Freeway, Dallas, Texas. In 1972, OKC Corp. had sales of portland cement of \$16,498,657.92.

PAR. 5. Each of the respondents is substantially engaged in the manufacture and sale of various types of portland cement.

## III. COMMERCE

PAR. 6. In the course and conduct of its business, each of the respondents is causing, and, for a substantial period of time, has caused the portland cement it manufactures to be sold to purchasers in various States of the United States, and is causing, and for a period of time, has caused the portland cement it manufactures to be shipped and distributed from its places of manufacture or storage located in various States of the United States to purchasers located in various other States of the United States. Each of the respondents, therefore, is, and has been, engaged in "commerce" and the business of each respondent is in and affects "commerce" as "commerce" is defined in the Federal Trade Commission Act, as amended.

## IV. NATURE OF TRADE AND COMMERCE

PAR. 7. The manufacture and sale of portland cement is a substantial industry in the United States. In 1972, there were about 50 portland cement companies in the United States operating approximately 170 plants. Domestic shipments of portland cement in 1972 amounted to approximately 83 million short tons, valued at about \$1.6 billion.

PAR. 8. Portland cement manufacturers sell their portland cement to

consumers such as ready mixed concrete companies, prestressed concrete products manufacturers, concrete block producers, contractors and building materials dealers. Approximately sixty (60) percent of all portland cement is shipped to firms engaged in the production and sale of ready mixed concrete.

PAR. 9. Portland cement is a standard commodity made according to standardized specifications, and the quality of the product does not differ substantially among producers except as between recognized and standardized grades thereof. Charges for transporting portland cement constitute a substantial portion of the cost of the product to the customer.

PAR. 10. The three respondents account for approximately seventy-five (75) percent of the sales of portland cement in the State of Oklahoma.

PAR. 11. In the course and conduct of the aforesaid business, each of the respondents, at all times referred to herein, has been in substantial competition in commerce with other respondents and with other corporations in the sale and distribution of portland cement as defined herein except insofar as such competition has been hindered, lessened, restricted, restrained or eliminated as alleged in this complaint.

#### V. NATURE OF THE OFFENSE

PAR. 12. In the conduct of the aforesaid business, the respondents, individually and collectively, with knowledge that other respondents and other sellers of portland cement simultaneously do likewise, are now using and for a number of years have used and pursued various courses of business behavior constituting unfair methods of competition and unfair acts in or affecting commerce. Among the unfair methods of competition in which respondents, individually and collectively, have been and are now engaged are the following:

- (a) exchanging, collecting and compiling information concerning prices, and terms and conditions of sale of portland cement;
- (b) establishing and maintaining a system of pricing for portland cement resulting in respondents quoting and charging identical delivered prices to each destination point;
- (c) refusing to allow customers to pick up portland cement at the site of manufacture or at a terminal site;
- (d) refusing to allow customers to arrange for the transportation of portland cement from the site of manufacture or a terminal site by a licensed hauler of a customer's choice;
- (e) refusing to permit the use of any hauler, other than their designated hauler, to transport portland cement manufactured by respondents from manufacture or terminal site; and

(f) controlling and attempting to control the point of use of portland cement sold to customers.

#### VI. EFFECTS

PAR. 13. The capacity, tendency and effects of the aforesaid alleged conduct of respondents, individually and collectively, are, among others, to:

- (a) stabilize prices and provide certainty in the pricing of portland cement;
- (b) stabilize prices and provide certainty in the bidding for sale of portland cement for use on public projects;
- (c) reduce and hinder actual and potential competition among respondents in the sale and distribution of portland cement;
- (d) prevent use of the cheapest and most efficient mode of transportation of portland cement; and
- (e) artificially raise the price paid by consumers, public and governmental bodies, and other customers for portland cement.

#### VII. VIOLATION

PAR. 14. The aforesaid acts and practices of each respondent are all to the prejudice of the public; have a tendency to restrain and prevent, and have actually restrained and prevented competition in the sale of portland cement; and have a tendency to create in each respondent a monopolistic control over the terms and conditions of the sale of portland cement and, therefore, constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45).

PAR. 15. The aforesaid acts and practices of the respondents, collectively, constitute a combination to restrict or eliminate competition in the sale and delivery of portland cement, are all to the prejudice of actual and potential competitors and customers of respondents and the public; have a dangerous tendency to and have actually restrained and prevented competition in the sale of portland cement; and have a tendency to create in respondents a monopoly in the sale and distribution of said product and, therefore, constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45).

#### DECISION AND ORDER AS TO MARTIN MARIETTA CORPORATION

The Commission having heretofore issued its complaint charging the respondent named in the caption hereto with violation of Section 5 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 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 Commission having thereafter withdrawn this matter from adjudication in accordance with Section 2.34(d) of its Rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing a consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its Rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent Martin Marietta Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located in the city of Rockville, State of Maryland.

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

#### DEFINITIONS

For purposes of this order, the following definitions shall apply:

“Portland cement” — a material sold in bulk which includes types I through V as specified by the American Society for Testing Materials, not including either masonry or white cement.

“Point of origin price” — price set by respondent for purchases by a customer at a mill or distribution point from which a delivered price is quoted to that customer. The “point of origin price” shall be no greater than the delivered price offered to the customer less the cost of transportation factor which was included by respondent in the delivered price.

“Delivered price” — price set by respondent for purchases by a



customer at a designated destination point. "Delivered price" shall include a cost of transportation factor, which factor shall consist of either (i) the nonabsorbed actual freight charge to the designated destination point or (ii) the average freight charge for an established geographic area in which that destination point is located.

## II

*It is ordered,* That respondent, its successors and assigns, and its directors, officers, agents, representatives, employees and affiliates (hereinafter "respondent"), directly or indirectly, through any corporate or other device in connection with the sale or distribution of portland cement:

1. Shall within ninety (90) days from the effective date hereof and for a period of ten (10) years thereafter, where a delivered price is offered to a customer from a mill or distribution point, also allow that customer the option of obtaining a point of origin price at that mill or distribution point and arranging or furnishing transportation from that mill or distribution point for the purchase of portland cement in quantities of at least a truckload in bulk cement vehicles (the minimum truckload tonnage to be the truckload minimum for licensed carriers as established by the Federal or State agency having jurisdiction over the applicable tariff) when the customer furnishes or arranges transportation physically compatible with respondent's facilities and complies with reasonable loading schedules and loading procedures of respondent.

2. Shall not exchange with its competitors information concerning prices, discount rates and other terms and conditions pertinent to the sale of portland cement, except in connection with a bona fide sale to, or purchase from, any such competitor or in connection with negotiations related thereto.

3. Shall not control or attempt to control the place of use of portland cement which has been sold to a customer, provided that, nothing contained herein shall affect respondent's right to obtain contractual assurances necessary to comply with the Robinson-Patman Act.

## III

*It is further ordered,* That, consistent with the definitions contained in Part I of this order, nothing contained in this order shall be interpreted as prohibiting respondent, when acting individually, (1) from exercising its right to establish the price at which and to select the customers to which it shall sell; (2) from selling at a point of origin or

delivered price established in good faith to meet the equally low price of a competitor; (3) from absorbing all of any part of actual freight charges on shipment to any geographic area; or (4) from charging the same price to all customers within an established geographic area. No pricing practice engaged in by respondent shall be deemed immune or exempt from the antitrust laws by reason of anything contained in this paragraph.

## IV

*It is further ordered,* That all persons in respondent's organization having sales and policy responsibilities with respect to the subject matter of this order shall be notified of the terms of this order.

## V

*It is further ordered,* That respondent, pursuant to Section 3.61 of the Commission's Rules, within ninety (90) days after this order becomes effective, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which respondent has complied with this order.

## DECISION AND ORDER AS TO IDEAL BASIC INDUSTRIES, INC.

The Commission having heretofore issued its complaint charging the respondent named in the caption hereto with violation of Section 5 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 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 Commission having thereafter withdrawn this matter from adjudication in accordance with Section 2.34(d) of its Rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its Rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules,

the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent Ideal Basic Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located in the city of Denver, State of Colorado.

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

#### DEFINITIONS

For the purposes of this order, the following definitions shall apply: "Portland cement" — a material sold in bulk which includes types I through V as specified by the American Society for Testing Materials, not including either masonry or white cement.

"Point of origin price" — a price set by respondent for purchases by a customer at a mill or distribution point from which a delivered price is quoted to that customer. The "point of origin price" shall be no greater than the delivered price offered to the customer less the actual transportation costs which would be incurred by the seller if the sale were made on a delivered basis.

"Delivered price" — a price set by respondent for purchases by a customer at a designated destination point, which price includes the cost of transportation to that designated destination point.

##### II

*It is ordered,* That respondent, its successors and assigns, and its directors, officers, agents, representatives, employees and affiliates (hereinafter "respondent"), directly or indirectly, through any corporate or other device in connection with the sale or distribution of portland cement:

1. Shall within ninety (90) days from the effective date hereof and for a period of ten (10) years thereafter, where a delivered price is offered to a customer from a mill or distribution point, also allow that customer the option of obtaining a point of origin price at that mill or distribution point and arranging or furnishing transportation from that mill or distribution point for the purchase of portland cement in quantities of at least a truckload in bulk cement vehicles (the minimum truckload tonnage to be the truckload minimum for licensed carriers as

established by the Federal or State agency having jurisdiction over the applicable tariff) when the customer furnishes or arranges transportation physically compatible with respondent's facilities and complies with reasonable loading schedules and loading procedures of respondent.

2. Shall not exchange with its competitors information concerning prices, discount rates and other terms and conditions pertinent to the sale of portland cement, except in connection with a bona fide sale to, or purchase from, any such competitor or in connection with negotiations related thereto.

3. Shall not control or attempt to control the place of use of portland cement which has been sold to a customer, provided that, nothing contained herein shall affect respondent's right to obtain contractual assurances necessary to comply with the Robinson-Patman Act.

### III

*It is further ordered,* That, consistent with the definitions contained in Part I of this order, nothing contained in this order shall be interpreted as prohibiting respondent, when acting individually, (1) from exercising its right to establish the price at which and to select the customers to which it shall sell; (2) from selling at a point of origin or delivered price established in good faith to meet the equally low price of a competitor; (3) from absorbing all or any part of actual freight charges on shipment to any geographic area; or (4) from charging the same price to all customers within an established geographic area. No pricing practice engaged in by respondent shall be deemed immune or exempt from the antitrust laws by reason of anything contained in this paragraph.

### IV

*It is further ordered,* That all persons in respondent's organization having sales and policy responsibilities with respect to the subject matter of this order shall be notified of the terms of this order.

### V

*It is further ordered,* That respondent, pursuant to Section 3.61 of the Commission's Rules, within ninety (90) days after this order becomes effective, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which respondent has complied with this order.

## DECISION AND ORDER AS TO OKC CORP.

The Commission having heretofore issued its complaint charging the respondent named in the caption hereto with violation of Section 5 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 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 Commission having thereafter withdrawn this matter from adjudication in accordance with Section 2.34(d) of its Rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34 (b) of its Rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order:

1. Respondent OKC Corp. 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 in the city of Dallas, State of Texas.

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

## DEFINITIONS

For the purposes of this order, the following definitions shall apply: "Portland cement" — a material sold in bulk which includes types I through V as specified by the American Society for Testing Materials, not including either masonry or white cement.

"Point of origin price" — price set by respondent for purchases by a customer at a mill or distribution point from which a delivered price is quoted to that customer. The "point of origin price" shall be no greater

than the delivered price offered to the customer less the cost of transportation factor which was included by respondent in the delivered price.

“Delivered price” — price set by respondent for purchases by a customer at a designated destination point. “Delivered price” shall include a cost of transportation factor, which factor shall consist of either (i) the non-absorbed actual freight charge to the designated destination point or (ii) the average freight charge for an established geographic area in which that destination point is located.

## II

*It is ordered*, That respondent, its successors and assigns, and its directors, officers, agents, representatives, employees and affiliates (hereinafter “respondent”), directly or indirectly, through any corporate or other device in connection with the sale or distribution of portland cement:

1. Shall within ninety (90) days from the effective date hereof and for a period of ten (10) years thereafter, where a delivered price is offered to a customer from a mill or distribution point, also allow that customer the option of obtaining a point of origin price at that mill or distribution point and arranging or furnishing transportation from that mill or distribution point for the purchase of portland cement in quantities of at least a truckload in bulk cement vehicles (the minimum truckload tonnage to be the truckload minimum for licensed carriers as established by the Federal or State agency having jurisdiction over the applicable tariff) when the customer furnishes or arranges transportation physically compatible with respondent’s facilities and complies with reasonable loading schedules and loading procedures of respondent.

2. Shall not exchange with its competitors information concerning prices, discount rates and other terms and conditions pertinent to the sale of portland cement, except in connection with a bona fide sale to, or purchase from, any such competitor or in connection with negotiations related thereto.

3. Shall not control or attempt to control the place of use of portland cement which has been sold to a customer, provided that, nothing contained herein shall affect respondent’s right to obtain contractual assurances necessary to comply with the Robinson-Patman Act.

## III

*It is further ordered*, That, consistent with the definitions contained

in Part I of this order, nothing contained in this order shall be interpreted as prohibiting respondent, when acting individually, (1) from exercising its right to establish the price at which and to select the customers to which it shall sell; (2) from selling at a point of origin or delivered price established in good faith to meet the equally low price of a competitor; (3) from absorbing all or any part of actual freight charges on shipment to any geographic area; or (4) from charging the same price to all customers within an established geographic area. No pricing practice engaged in by respondent shall be deemed immune or exempt from the antitrust laws by reason of anything contained in this paragraph.

## IV

*It is further ordered,* That all persons in respondent's organization having sales and policy responsibilities with respect to the subject matter of this order shall be notified of the terms of this order.

## V

*It is further ordered,* That respondent, pursuant to Section 3.61 of the Commission's Rules, within ninety (90) days after this order becomes effective, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which respondent has complied with this order.

IN THE MATTER OF  
SPIEGEL, INC.

MODIFIED ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket 8990. Complaint, Aug. 7, 1974 — Modified Order, Dec. 27, 1976*

Order modifying an earlier order dated Aug. 18, 1975, 40 F.R. 44317, 86 F.T.C. 425, by limiting the reporting requirements of Paragraphs II and V, as mandated by the Court of Appeals for the Seventh Circuit in its August 9, 1976, decision and judgment, 540 F. 2d 803 (1976), to only those suits instituted in a county other than that where the defendant resided at the commencement of the action, or where he signed the contract sued on.

*Appearances*

For the Commission: *Randall H. Brook* and *Barry E. Barnes*.

For the respondent: *Basil J. Mezines, Stein, Mitchell & Mezines*, Washington, D.C.

MODIFIED ORDER TO CEASE AND DESIST

Respondent, having filed in the United States Court of Appeals for the Seventh Circuit on October 7, 1975, a petition to review an order to cease and desist issued herein on August 18, 1975; and the Court having rendered its decision and judgment on August 9, 1976, affirming and enforcing the Commission's order with modification of Paragraphs II and V; and the time in which to file a petition for certiorari having expired without either party having filed such a petition;

*Now, therefore, it is hereby ordered*, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the decision and judgment of the Court to read as follows:

ORDER

I

For purposes of this order, the term "respondent" means "Spiegel, Inc., a corporation, and its successors, assigns, officers, agents, representatives and employees, acting directly or through any corporation, subsidiary, division, or other device, including any collection agency."

II

*It is ordered*, That respondent, in connection with the collection of retail credit accounts in or affecting commerce, as "commerce" is



Modified Order

88 F.T.C.

defined in the Federal Trade Commission Act, do forthwith cease and desist from instituting suits except in the county where the defendant resides at the commencement of the action, or in the county where the defendant signed the contract sued upon. This provision shall not be construed to prohibit the institution of suit by respondent against Illinois residents in an Illinois county courthouse which is a reasonable distance from their place of residence. The provision shall not preempt any rule of law which further limits choice of forum or which requires, in actions involving real property or fixtures attached to real property, that suit be instituted in a particular county.

## III

*It is further ordered,* That, where respondent learns subsequent to institution of a suit that the preceding Paragraph II has not been complied with, it shall forthwith terminate the suit and vacate any default judgment entered thereunder. In lieu of such termination, respondent may effect a change of forum to a county permitted by the preceding paragraph, provided that respondent gives defendant notice of such action and opportunity to defend equivalent to that which defendant would receive if a new suit were being instituted. In all cases respondent shall provide defendants with a clear explanation of the action taken and of the defendants' right to appear, answer and defend in the new forum.

## IV

*It is further ordered,* That where respondent terminates a suit or vacates a judgment pursuant to the preceding Paragraph III it shall give notice of such termination or vacation to each "consumer reporting agency," as such term is defined in the Fair Credit Reporting Act (15 U.S.C. §603), which it has been informed or has reason to know has recorded the suit or judgment in its files. Additionally, respondent shall furnish such notice to any other person or organization upon request of the defendant.

## V

*It is further ordered,* That respondent prepare and maintain a summary of suits involving the collection of retail credit accounts by respondent which were instituted in a county other than where the defendant resides, or where the defendant signed the contract sued upon. This summary shall contain each defendant's name, address, and county of residence; county where the contract was signed by the defendant; county where served; date served; date filed; docket

number; name and location of court in which filed; name of plaintiff (if a collection agency suing in its own name); amount claimed; disposition (including garnishment or execution, if any); and explanation of the reason for choice of forum. This summary shall cover all such suits instituted, pending, terminated, or acted upon subsequent to judgment during the two years immediately following the effective date of this order. A copy of this summary shall be submitted to the Federal Trade Commission on a quarterly basis.

## VI

*It is further ordered,* That Spiegel, Inc. shall forthwith deliver a copy of this order to each of its subsidiaries and operating divisions, to each collection agency currently collecting any of Spiegel's retail credit accounts, and to any other collection agency prior to referral to it of any of Spiegel's retail credit accounts. Spiegel, Inc., shall obtain and preserve signed and dated statements from each collection agency, acknowledging receipt of the order and willingness to comply with it.

*It is further ordered,* That respondent shall notify the Commission at least thirty 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 days and at the end of six months after the effective date of the order served upon it, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form of its compliance with the order to cease and desist.