

Complaint

88 F.T.C.

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

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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 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

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.
1251 New Scotland Road
Box 8650
Albany, NY 12208 | Chautauqua Region Medical Service, Inc.
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 | Aetna Life Insurance Company
151 Farmington Avenue |

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Chicago, IL 60605

Bankers Life Company
711 High Street
Des Moines, IA 50307

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

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

Reliance Insurance Group
4 Penn Center Plaza
Philadelphia, PA 19103

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

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

Nevada State Medical Association
3660 Baker Lane
Reno, NV 89502

Hartford, CT 06115

Employers Life Insurance
Company of Wausau
2000 Westwood Drive
Wausau, WI 54401

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

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

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

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

Blue 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